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# The Solicitors' Journal.

*LONDON, DECEMBER* 19, 1863.

IT WAS WITH SINCERE REGRET that we announced in our last number the death of Mr. Justice Wightman. A rumour very generally circulated throughout the profession on the morning of Thursday week that that learned judge had added another to the many losses the public and the profession had lately sustained, proved to be correct. From his advanced age, we could hardly hope that his services would long be spared to the country in the laborious office of a Common Law Judge, yet his apparent health and vigour led us to anticipate, with confidence, the time when he should follow the example of one who for so many years sat side by side with him in the Court of Queen's Bench—Sir John Coleridge—and render his services to his Sovereign at a tribunal less arduous, though not less important. During a period of twenty-two years he carried to the Bench a high, dignified, and becoming bearing, a calm, careful, and patient attention, and a knowledge of the laws of his country rarely equalled, and never of late years surpassed. The Lord Chancellor had at once to direct his attention to the selection of Mr. Justice Wightman's successor, and he has in his wisdom chosen a man who has for many years been regarded by the profession as one of its most distinguished ornaments. Mr. Justice Mellor, on taking his seat on the Bench at York, on the 11th instant expressed—

With considerable emotion the profound regret which he felt at the melancholy circumstance which occasioned his being there that day—a regret in which every member of the bar that he saw before him would equally sympathize. This regret would be felt wherever Mr. Justice Wightman was so well known as he had been to almost all the bar. He was a man of the kindest possible heart, once himself a member of this large circuit, and only leaving it twenty-two years ago for the purpose of fulfilling the duties of that office which he so well and ably held. Up to the last hour of his life he had continued in the discharge of its duties with vigour unimpaired, and with intellect unclouded and undimmed. In every matter which came before him he gave the clearest proof of that careful study and intellectual eminence by which his judicial life was marked. Among those who knew him, in whatever rank of life they might be placed, there could be but one opinion of his great learning and ability, and but one feeling of the highest possible respect on account of his public career, and of the virtues which adorned his private life.

THE APPOINTMENT OF MR. SERJEANT SHEE to the vacant judgeship is satisfactory to all parties, both professional, and, we may say, *political*, except a very small section, who fear that the fact of the new judge being in creed a Roman Catholic, will impair his discharge of the high and responsible duties of the office. Even if religious opinions were likely to lead to a want of fidelity in the discharge of the duties of the office, which we deny, in the present instance the character Mr. Serjeant Shee holds in the profession is a sufficient guarantee, and will dispel any doubt on that score; and we rejoice to think that all remains of religious intolerance are being swept away by the executive, as they have been by the Legislative power, and that an honest man, no matter what his religious opinions may be, is, practically, with barely an exception, eligible for any office in the State. As we stated in our number of last week, the late Mr. Justice Wightman was of Scotch origin, and was one of the many examples of that hard, physical, and mental endurance, which are so often to be found in places of eminence both at the Bar and on the Bench. The new judge is by extraction, on his father's side, a native of the sister country of the United Kingdom, and has been famous, like many from the same island, for fluency of speech. Throughout his career at the Bar he has been known and admired as a persuasive, clear speaker. At an early period of his legal life he acquired distinction as an advocate, and in later times, after Lord Chief Justice Cockburn and Lord Chelmsford were raised to the Bench, and their services as advocates no longer to be had, there has been no man at the Bar whose reputation as an advocate has stood so high. He could always address a jury in nervous and well-chosen language. He never, indeed, acquired the brilliancy of Cockburn's style, or the insinuating manner of Thesiger, but his speaking was characterised by earnestness and persuasiveness, at times rising to the highest flights of eloquence, and never failing to carry weight and influence with a jury. He also has been known as a sound lawyer, and as an editor of Lord Tenterden's book on Merchant Shipping, best known as "Abbott on Shipping," and as the author of two volumes of "Papers and Letters on Subjects of Literary, Historical, and Political Interest." The new judge is the eldest son of the late Mr. Joseph Shee, of Thomastown, in the county of Kilkenny. His mother belonged to an old family in the county of Kent. He was himself born in the parish of Marylebone, and is, therefore, an Englishman by birth. He was educated at the Roman Catholic College of St. Cuthbert's, Durham, and at Edinburgh University. He was called to the Bar at Lincoln's-inn in 1828, and went the Home Circuit and the Kent sessions, and in time became the leader of his circuit. In the year 1840 he was raised to the rank of Serjeant-at-Law, with a patent of precedence, and in the year 1858 he was appointed Queen's Serjeant. In 1847 he contested the borough of Marylebone, but was not successful. In 1852 he was returned to represent the county of Kilkenny in Parliament, but was unseated at the general election in 1857. Whilst in Parliament Mr. Serjeant Shee was a consistent supporter of the Liberal cause. He married a daughter of Sir James Gordon, Premier Baronet of Scotland, and has several children. There has seldom, if ever, been any appointment to the Judicial Bench which has elicited such warm and general applause as the recent one. While the office was still vacant, some of the leading journals, departing from the usual course in such matters, expressed themselves strongly in favour of the paramount claims of Mr. Serjeant Shee. The following is an extract from the *Times* upon the subject:—

We are well aware that we are treading upon dangerous ground when we advance a step further, and apply this general proposition to an individual case. Nothing is more certain to do harm to any man who stands well for any conspicuous position in the gift of the Crown, than that his pretensions should be set forth by public speakers or writers. This is especially the case in judicial appointments, and we are not prepared to say that this ought not to be so; for, of all appointments, these should be made upon the calmest judgment and without influence from any popular impulse. But there are exceptions to every general rule, and there are cases in which it becomes a duty, not to indicate a selection, but to protest against an exclusion. It is now a great many years since the public saw with indignation two eminent lawyers shut out from the ordinary course of preferment in their profession, on account of their political opinions, or for reasons connected with the zealous exercise of professional duties. Mr. Brougham and Mr. Denman had no special right to the rank of King's Counsel, nor would it have been decorous or even reasonable in any public speaker or public writer to clamour for their advancement. But when it became notorious that they lay under a ban by reason of

their politics, and that it had been declared they never should be allowed to rise above their then position at the Bar, the public protest was very loudly made, and their exclusion was felt as a general grievance. Unless we are much misinformed, something of the same kind is now happening, and a very eminent lawyer has been avowedly excluded from the English Bench because he is a Roman Catholic. It is very commonly believed that upon the last vacancy this gentleman was named for the appointment, and that his religion was made a ground of objection. The whole profession will agree that no other objection could have been urged. It can be nothing to us or to the public what competent man succeeds Mr. Justice Wightman, but it is of great consequence that any remnant of the old rags of bigotry and intolerance should hang about our Council Chamber, and should narrow the choice of selection of our public servants. If it be a homage paid to the baser prejudices of the nation, it is very cowardly; if it be a real substantive conviction that a Roman Catholic can never be an upright English judge, it is a monstrous folly.

There ought to be only one rule in the selection of judges, both in England and Ireland—to choose the man who will make the best judge. The best judge is the man who, possessing the learning of his profession, has strength of mind to put off the form of his politics and the form of his faith at the door of his court, to take them up again as he goes out. If he cannot do this, be he Whig or Tory, Churchman, Dissenter, or Catholic, he must be a partisan judge; if he can do this, it is of no consequence what his politics or form of religion may be. In Ireland, where the Protestants are the most educated and wealthy part of the community, it is almost a disqualification for the Bench to be a protestant; in England, where the Catholics, although very few, are second to none of our fellow-subjects in respectability and loyalty, it is declared to be an absolute disqualification to be a Catholic. All this is an anachronism, and we ought to be ashamed of such folly. In a Liberal Government such an ostentatious intolerance is especially odious.

The manner in which the announcement of the appointment was all but universally received was a justification of the exceptional course taken by the *Times* and other journals; and it must be satisfactory to Lord Westbury to know that his Lordship's part in the matter is fully appreciated. It, no doubt, required a strong Chancellor, and a firm resolution on his part, to have countervailed the opposition to the appointment which notoriously existed in, at least, one other member of the Cabinet. On this subject also the *Times* expresses the general opinion in the following passage of a leading article of its publication of Wednesday last:—

On every ground, personal, professional, and political, Lord Westbury deserves credit for having done justice to Mr. Serjeant Shee. It is well known that the responsibility rests with the Lord Chancellor alone. No pressure was needed to induce Lord Eldon to abstain from encouraging the aspirations of Liberal lawyers, and his successors have, as a rule, given the lion's share of their legal patronage to those of their own party. There is much to be said against this practice, though it may be fair for both sides of the House, inasmuch as it tends to make a seat on the Bench a reward for Parliamentary support. Still, it has never been carried so far as to injure the integrity or prestige of the judicature. As Lord Brougham truly says, "For the last century and upwards no whisper has been heard against the spotless purity of the ermine," and no modern Junius has repeated the reckless slanders that were launched against Lord Mansfield. One reason of this has been that judicial appointments have rarely been tainted with jobbery. They have generally been given to the best man, or nearly the best man, of the right politics, and sometimes to a man of the wrong politics, or of no politics at all. No questions have been asked about his religious opinions, if he was understood to be a Protestant, and no one has yet given even a plausible reason why any question should be asked upon this point.

We should have had some hesitation in touching upon the subject at all if the question were one which interested only one large section of the public, or even the public generally, considered independently of the legal profession. But it really was one in which the lawyers were most deeply interested, and they, therefore, owe a special debt of gratitude to the Lord Chancellor for the response which he has given to their acclamations in favour of the eminent lawyer and distinguished advocate, as well as the universal favourite, who has been recently elevated to a position to which he was fairly and honourably entitled many years ago.

The New Arrangement of the Circuits has been at last accomplished, and is well adapted to carry out the object contemplated, which was to equalize the dignified idleness of some of the circuits, and the laborious duties of others. The Northern, the Midland, and the Norfolk, are alone subjected to alteration. The Northern gives up York to the Midland, whilst the latter gives up to the Norfolk, Northampton, Leicester, and Rutland. It is, we believe, understood that, for the convenience of the Midland and the Northern Circuit Bars, York shall be the last assize town on the Midland Circuit. The only question now to settle, is the practice of the Bar on the three circuits. That is, we understand, to be done at a meeting of the three circuits' Bars, which will shortly be convened. But, in all probability they will be governed by the precedent afforded by the Oxford and Welch Circuits. When the Welch circuits were established, the members of the Oxford circuit, who went to the Welch courts, were allowed to go the new circuits—until they passed away. The last of them were the late Sir John Jervis, Mr. Justice Williams, and Mr. Chilton, late judge of the Lambeth County Court.

The following is the official announcement from the *Gazette*:—Her Majesty has, by an order in council, dated the 8th instant, directed that the Northern, the Midland, and the Norfolk Circuits of her Majesty's judges in England, shall be altered in the manner following (that is to say): the county of York, and the county of the city of York, shall be taken away from the Northern Circuit, and annexed to the Midland Circuit; and the counties of Leicester and of Rutland and of Northampton shall be taken away from the Midland Circuit, and annexed to the Norfolk Circuit; and that the alterations shall take effect from the 8th of December, 1863.

Her Majesty has also ordered that the number of revising barristers to be appointed for the several counties, cities, boroughs, and places, within the Northern Circuit (being a circuit affected by such alterations as aforesaid), shall be diminished by six; and that the number of revising barristers to be appointed for the several counties, cities, boroughs, and places, within the Midland Circuit (being a circuit affected by such alterations as aforesaid), shall be increased by three; and that the number of revising barristers to be appointed for the several counties, cities, boroughs, and places, within the Norfolk Circuit (being a district affected by such alterations as aforesaid), shall be increased by three.

An appointment of borough magistrates is about to take place in Liverpool, and amongst the names which have been forwarded to the Lord Chancellor are those of Mr. Thomas Avison and Mr. Ambrose Lace, two solicitors of the highest respectability in the town. Both of these gentlemen are so well known and highly esteemed in the profession both in the metropolis and the provinces, that it is hardly necessary for us to do more than mention their names to show that the Town Council of Liverpool have made a selection, which can be disallowed upon no other ground than that they are solicitors. We notice that in the list of the county grand jury at the present Liverpool Assizes, of which Lord Stanley is foreman, the name of Mr. Avison stands third; and it cannot be denied that in point of social position and of personal qualifications, both he and Mr. Lace would be an honour to any body of magistrates. The question, therefore, is now raised in a manner which must lead either to a satisfactory solution, or to a refusal that will justify bringing the matter under the consideration of Parliament, as soon as it meets. Early in the present year, the Town Council of Wolverhampton protested against the rejection of their request for the appoint-

ment of Mr. Henry Hartley Fowler, the mayor of the town, as a permanent magistrate of the borough, on the ground that he was a solicitor in practice, and passed resolutions condemnatory of the arbitrary rule which thus disqualified one of their most highly respected townsmen from acting permanently in a magisterial capacity, which was inferior to that which the votes of his townsmen had conferred upon him. It is hard to believe that any such arbitrary and absolute rule really exists. There is certainly no warrant for it in the Act of Parliament on which it is supposed to be founded, and it is a standing slur upon the social status of solicitors throughout the kingdom. It is, moreover, a curious anomaly that in Scotland, writers to the Signet and solicitors are frequently appointed justices of the peace, and so are solicitors in Ireland, while in England the obnoxious rule of exclusion has hitherto been rigidly enforced against them. The matter has probably not yet been brought distinctly under the attention of the present Lord Chancellor; and, for all we know to the contrary, the decision in Mr. Fowler's case may have been merely in the way of routine, and without any reference to his Lordship personally. If we are right in our surmise, we entertain the hope that the application of the Liverpool Town Council may be successful, and that the appointment of Mr. Avison and Mr. Lace, will be the means of removing a serious stigma from the general body of attorneys and solicitors throughout England.

In the Consistorial Court at Dublin a very interesting and able judgment has recently been delivered by Dr. Battersby, the judge, on the right of the rector of a parish, in Ireland, to compel the incumbent of a proprietary chapel or district church, in the same parish, to pay over the alms collected at the offertory therein. The learned judge traces the history of the offertory in the English Church, and the uses to which it was applied from a very early period. The Acts governing proprietary chapels and district churches in Ireland, although generally similar to, are not quite identical with those in England, and the judgment is based partly upon the differences between the two. It contains, however, a valuable summary of law upon the subject which is applicable in both countries. In the result it was held that the incumbent of the proprietary chapel or district church (there was a contest as to whether it was entitled to the latter denomination) was not entitled to take for himself or to apply the money contributed at the offertory. A full report of the judgment will be found elsewhere in our columns.

The Crawley Court Martial is likely to be the last of its kind. We believe that a commission, with Lord Chelmsford at its head, is about to be issued for the purpose of inquiring into the possibility of re-organising the system of courts-martial, so as to bring their procedure into something like accordance with that of regularly constituted legal tribunals. The parties to the Crawley court martial, and their legal advisers, together with the officers who composed the court, will no doubt be able to afford abundance of useful information to the commissioners.

In Re Holden a question of some interest to solicitors was raised the other day before the Lord Chancellor. It was an application by a gentleman who had purchased the book-debts and *books* of a firm of solicitors at Liverpool, who had become bankrupt. Section 137 of the Act of 1861 sanctions such a transaction in the case of any ordinary trader; but the Lord Chancellor was of opinion that, in the case of a bankrupt solicitor, his books could not be sold or transferred to a stranger, because it would be impossible to do so [without divulging the clients' confidential business]

A vacancy has occurred in the chambers of Vice-Chancellor Kindersley, by the death of Mr. Charles Pugh, one of the chief clerks. Mr. Pugh died at his residence, on Monday last, of gastric fever. We are informed that Mr. J. A. Buckley, of the Master of the Rolls' chambers, is performing the duties of Mr. Pugh until a successor is appointed to the latter gentleman.

## INSANITY A PLEA FOR CRIME.

The evidence of Dr. Winslow, at Derby, on the trial of Townley for the murder of Miss Goodwin, ought not to be allowed to pass in a legal journal without some comment. It is noticeable upon many, but mainly upon two, grounds;—first, because it was the result of *ex post facto* conversations with the prisoner, which, according to all the rules of evidence, should not be allowed to be converted into testimony in his favour; and, secondly, because it propounds a theory of irresponsibility for crime, which is so opposite to every principle of criminal justice that if it were adopted, there would be few convictions for any offence that involves the risk of the criminal's life.

Miss Goodwin was murdered by the prisoner on the 21st of August, and Dr. Winslow saw him on the 18th of November, and again on the 10th of December, and from these two interviews, he came to the conclusion that the prisoner was insane, and was not responsible for his acts. The doctor informs us that on his first visit the prisoner's "behaviour was quite natural and was not assumed;" but that during the second visit, "he became much excited, and assumed a wild maniacal aspect." Except these symptomatic phenomena, the doctor had no means of judging otherwise than from some statements made by the prisoner himself—of the character of which we shall see presently. We are just now concerned with them only so far as they, or any deductions drawn from them, should be regarded when viewed in the light of the rules of evidence. Indeed, it hardly needs to do anything more than to state the facts to show that any evidence of this kind is contrary to all principle, and ought to be wholly inadmissible. The declarations of parties are, no doubt, sometimes admitted in evidence, when they are part of the *res gestæ* or transaction, and occasionally upon the ground, not that they constitute the very fact which is the subject of inquiry, but because they elucidate it. In all such cases, however, the principle upon which these statements are admitted is, that they have been made without premeditation or artifice, and without a view to the consequences. Declarations are also sometimes admissible as explanatory evidence where they would be inadmissible for other purposes; but it would obviously tend to produce a complete defeat of justice, if any statements made by a party in a civil action, or a prisoner under a criminal charge, long subsequent to the fact which is the subject of inquiry, and possibly, at least, with a single view to the consequences, were allowed to be used directly or indirectly as evidence in his favour; but this was what, in fact, was attempted through the medium of Dr. Winslow; for his evidence in Townley's case turned wholly upon statements made and opinions uttered by the prisoner himself months after the crime had been committed.

But even if such evidence were wholly unobjectionable in its nature and composition, the particular grounds which Dr. Winslow assigned for his opinion of the prisoner's insanity were so absurdly insufficient that they challenge our attention to the theory of irresponsibility which the mad-doctors have for many years been trying to force upon judges and juries. Upon a careful perusal of the evidence the only grounds that we can discover were, that the prisoner refused to acknowledge that he had committed a crime; that he alleged the unhappy victim to have been his property; that he insisted upon being irresponsible for what he had done; that he spoke of a conspiracy against him, and denied the existence of a God and a future world. Upon cross-examination, however, the doctor said, "the prisoner, I have no doubt, knows that these opinions of his are contrary to those generally en-

tertained, and that if acted upon they would subject him to punishment. I should think he would know that killing a person was contrary to law, and wrong in that sense. I should think that from his saying he should be hanged he knew he had done wrong." Now there is very little doubt that if the doctor's opinion were to have been adopted by the jury in this case, we should have plenty of such defences in future, as the great majority of persons who could be guilty of assassination, would have little difficulty in giving utterance to as many eccentricities as this unhappy man did in his interview with Dr. Winslow; and we should thus give those who are most ingenious in the simulation of madness, and who could afford the services of a mad-doctor, something like absolute immunity from capital punishment. But, admitting all that the doctor said (including, of course, what came out on his cross-examination), no case whatever was made for conferring irresponsibility on the prisoner, on the ground of insanity. If the reasons alleged by him were sufficient, the great majority of crimes must go unpunishable, and Society would soon lose its bond of union. The truth is, that the interests of Society and of the mad-doctors are at issue upon this question. The former require that every man should be *prima facie* responsible for his acts, and the law is therefore very chary of admitting such theories as are understood among a certain class of medical men by the terms moral insanity, irresistible impulse, monomania, and the like. It is for the interest of the mad-doctors, on the other hand, to include in the category of the insane as many of the human race as possible; and, accordingly, we find these gentlemen sometimes giving definitions and descriptions from which few could escape. This circumstance ought of itself to be sufficient to make it doubtful whether such evidence should be at all receivable; or, if receivable, whether it should ever be allowed any weight in the decision of such a question as that of legal responsibility.

The fact is that all testimony of this kind proceeds upon a fallacy. No man ought to be heard as a witness to deliver an *opinion* that a prisoner is insane, and therefore irresponsible for his acts. Of course we do not mean to say that a prisoner should be deprived of such a defence, but only that it should be governed by and conducted according to the rules of evidence. Let *facts* be adduced to the jury, and it is for them to judge of their effect. It is merely impertinent to any issue raised in such a case, to say that a doctor considers that the prisoner should not be held responsible for his conduct because he is an Atheist, and insists upon his right to have committed a crime, although he is quite aware of its character and consequences in the eye of the law. It would be just as reasonable to admit some constitution-monger as a witness in a trial for high treason to prove that the accused was justified in his conduct by his theory of government; or the editor of *Bell's Life*, on a charge against a pugilist for a breach of the peace, to prove that the ruffians of the Ring were really estimable men from a proper point of view. All these cases, no doubt, depend upon the light in which they are regarded; and if we were competent to discuss the mysteries of Fate and Freewill (which, by-the-bye, the mad-doctors are just as incompetent to do as ourselves) we might possibly arrive at the conclusion that a good many of our criminals are more to be pitied than blamed. But we must take things as they are, and proceed according to the powers and faculties we possess. At all events, the law must have its own point of view, and can hardly be expected to have the many-sided sympathies which all our theorists of various sorts might wish to import into it, as occasion required for their purposes; and it is, above all things, necessary that it should be free from doubt upon every question touching the sacredness of human life. Mr. Baron Martin, in his charge to the jury, laid down the rule clearly which governs these cases. Here it is:—"Assuming that the prisoner's mind was diseased on the 21st of August, yet, if he knew the act he did would probably cause death, and that what he was doing was against the law of God and the subject of legal punishment, he is responsible for his act." This is unquestionably now the settled rule of law, and we believe it is necessary, as a protection to society, against such dangerous doctrines as Dr. Winslow attempted to uphold in his evidence before the jury.

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## THE RIGHT OF AN HEIR-AT-LAW TO AN ISSUE.

Few rules of procedure in the Court of Chancery have been hitherto considered better established than that according to which an heir-at-law is entitled, in a suit by a devisee to establish a will, to the trial of an issue *devisavit vel non* before a jury. The reasons for the rule are twofold,—first, because, upon the death of the ancestor, the presumption of law is, that all the freehold estates of inheritance of which he died seised, become vested in the heir, unless it is shown that the ordinary course of descent has been interrupted by the ancestor having made a will, and, therefore, it has been considered that if the heir objects to the will, he ought to have the opportunity of cross-examining the witnesses in support of it before a jury; and, secondly, in order to satisfy the conscience of a court of equity as to the truth of the evidence upon which it is sought to support the will.

It is true that in some cases this rule has been infringed, but upon an examination of the authorities, the exceptions will be found to range themselves under one of two classes—viz., first, where the heir has himself destroyed or suppressed the will; or, secondly, where he has, during a long period, so acted upon the footing of the will being valid, that his own rights at law are barred, or the rights of other parties claiming under the will are materially changed. In the first class of cases the Court has established the will against the heir, without permitting him to have an issue as to its validity, tried before a jury, upon the principle that the presumption of law in favour of his title has been rebutted by the presumption of law which always arises against a spoliator; and, in the second class of cases, the ordinary rules as to acquiescence have been followed. It is, however, worthy of remark, that, unless it had been clearly shown that the heir had been guilty of the act of destroying or suppressing the will, or had lost his own legal rights, or materially changed the rights of others, by his *laches*, the Court would not have deprived the heir of his strict right to an issue.

This rule was certainly not without its inconveniences. After a suit by a devisee had proceeded through all its stages up to the hearing—after all the expense of taking evidence in the cause had been incurred—after the heir-at-law had thus become well aware of the nature and extent of the evidence which could be brought forward in support of the validity of the will—he was still entitled to insist upon the whole matter being reconsidered in a trial of an issue before a jury, when the evidence already taken would be useless, save as materials for examination and cross-examination of the witnesses, who would be required to give their evidence *viva voce*. And when the trial had taken place, although the heir might be defeated, he was still entitled to his costs, unless he set up a case of insanity, or any other disability on the part of the testator, when, if he failed, he was not allowed to have his costs. In no case, however, was he liable to pay any costs incurred by a *bona fide* dispute on his part as to the validity of the will.

The great burden which might thus be thrown upon devisees by a litigant heir-at-law, led the Chancery Commissioners, in their report to Parliament in March, 1826, to suggest that in all suits for the establishment of wills, neither party should, before the hearing, enter into any evidence, either to support or question the

will, except that the attesting witnesses should be allowed to be examined and cross-examined. This reasonable suggestion was not adopted, and up to the present time the ordinary practice has been followed in suits to impeach or establish wills.

The recent decisions of the Master of the Rolls, however, in the cases of *Williams* v. *Williams* (reported in the last number of the *Weekly Reporter*, p. 140) and *Cowgill* v. *Rhodes* (reported in this week's number of the same reports) will, if followed, greatly modify the rights of heirs-at-law in suits relating to the validity of wills.

In the former case a devisee filed his bill against the heir-at-law to establish the will, and brought evidence as to its signature, and also to the effect that the will afterwards passed into the possession of the heir-at-law, who failed to produce it. The heir positively denied any knowledge of its existence or its possession, and claimed his right to try the question of its existence and validity, in the county where the property was situated. The Master of the Rolls considered, that as the defendant had not cross-examined the plaintiff's witnesses in the suit before him, their evidence must be taken to be true, and as his Honour was satisfied upon such evidence, that the will was traced into their possession by the defendant, he held that the latter was not entitled to an issue. The defendant's excuse for not cross-examining the plaintiff's witnesses, was that he could not afford the expense of bringing them to town from Wales, where they all resided.

In the latter case (*Cowgill* v. *Rhodes*) the heir-at-law filed his bill against the devisees, to obtain a declaration as to the invalidity of the will of his ancestor (which had not been proved), upon the ground that at the time when the testator signed it he was incapacitated by reason of an attack of *delirium tremens*. The bill prayed that an issue or an action at law might be directed. Both parties went into evidence, but the witnesses for the defendant had not been cross-examined by the plaintiff, as it was alleged, also, on account of the expense of bringing them to town. The Master of the Rolls refused to allow the plaintiff to have the question tried before a jury, because he considered, upon the evidence, that the verdict could only be in favour of the will, and he made a decree establishing the will, also ordering the heir-at-law to pay the costs of his unsuccessful contention.

In both cases his Honour considered that the new practice, under which courts of equity might bring legal questions before themselves, either with or without a jury, had modified the rule as to the right of the heir-at-law to an issue or an action at law, and that the Court ought, in every case, to exercise its own discretion upon the evidence, whether it was desirable or not to submit the question to a jury.

It is most essential that the practice upon this subject should be speedily and finally settled. Nothing can be more embarrassing to the adviser than uncertainty as to the effect of his abstaining from giving notice, on behalf of the heir-at-law, to cross-examine his adversary's witnesses. Nothing can be more unsatisfactory than that the right of a litigant heir-at-law should be dependent upon his wealth. If it were once well known that a devisee could, by instituting a suit in equity against the heir-at-law to establish a will instead of proceeding against him by an action of ejectment in the district where the property is situated and the parties reside, put the heir-at-law in the position of being defeated, by reason of the expense of bringing his opponent's witnesses to London for the purposes of cross-examination, we fear that the number of disinherited heirs would increase. It is clear that the practice to be observed in future must be placed upon some more reasonable basis than that of expense.

At the same time, it is obvious that since the recent change in Chancery practice, enabling the equity judges to entertain questions of fact with the assistance of a jury, it is a great hardship upon the devisee that evidence which has been taken in the cause before the hearing should be rendered practically useless to him by reason of the objection of the heir-at-law to the jurisdiction, and his claim to a trial of an issue at law before a jury in the district where the property is situated.

The question of the validity of a will is one purely of fact, and we have no hesitation in saying that it is more convenient that the same should be tried before a jury in the district where the property is situated, and where, as a general rule, the majority of the witnesses reside, than in a Chancery suit by means of affidavit or deposition, eked out or qualified by a *viva voce* cross-examination before the examiner or in court. There is seldom a case in which the validity of a will is contested where, upon some point, there is not a direct conflict of testimony; and it is on such occasions that the searching machinery of the common law courts comes most effectually into play. The discredit often thrown upon a witness's testimony as to the main facts of the case by a general cross-examination is well known to practitioners at the common law bar, while, under the new practice in the Court of Chancery, it is beginning to be an understood thing, at least in some branches of the court, that it is useless to attempt to influence the judge's mind by a general cross-examination of a witness. In the second case above referred to, the Master of the Rolls said that, in his opinion at least, cross-examination of a witness in open court was not productive of much advantage; and we have also heard the present Lord Chancellor express his great dissatisfaction with the system of oral cross-examination upon written testimony.

We are not prepared to abandon the doctrine that an heir-at-law has, to a certain extent, a privileged position, as far as regards the real estates of his ancestor, although we do not think that it ought to be unreasonably extended. So long, however, as the law awards him this privilege, it ought not through its rules of procedure to deprive him of its practical exercise; still less should it offer to a devisee the means of triumphing over the poverty of his adversary.

We think that an heir-at-law ought in every case—except where he has by his own misconduct or by long acquiescence, lost his claim to consideration—to be allowed the option of having the validity of the instrument which disinherits him, tried at law before a jury in the district where the property is situated, but that this option should only be exerciseable by him in such a manner as to be the least burdensome upon the devisee.

This end might be attained in a simple manner. In the case where an heir-at-law is the plaintiff in a suit in equity and prays a declaration as to the invalidity of the will, he might be required to state in his bill whether or not he desired the question to be tried before a jury. If he expresses such a wish, the defendant might be compelled to submit to such a trial, and neither party should in that case be allowed to go into any evidence in the suit; if not, then the cause might proceed in the usual manner to a hearing. On the other hand, in the case of a devisee being plaintiff, and seeking to establish the will against the heir-at-law, if the latter contests it, and desires to have its validity tried before a jury, he might be empowered, within a fixed period, to place his desire upon record, when, as in the other case, neither party should be permitted to go into any evidence in the suit, but the matter should be tried before a jury. By such a system as this the privilege of the heir-at-law might be preserved, without injustice being done to the devisee, and we should be rescued from a system which would seem to make the exercise of an ancient privilege to depend upon the discretion of the judge or the pocket of the suitor.

## REAL PROPERTY LAW.

### Agreement to Settle After-acquired Property.

*Edye* v. *Addison*, V. C. W., 12 W. R. 97.

In marriage settlements, the provision most fruitful in litigation is the covenant for the settlement of after-acquired property. For this reason, a few weeks ago (Nov. 21), we took the opportunity of the case of *Coventry* v. *Coventry*, to trace and examine the growth and determination of the law upon the form of covenant or agreement necessary to bind the wife's after-acquired separate property. In order to accomplish the object generally desired of bringing all the wife's expectations within the provision to be made for her, her intended husband, and any children of the marriage, the common form, according to the best precedents, runs to the effect, that it is by the instrument agreed and declared (see *Butcher* v. *Butcher*, 14 Beav. 222, noticed in the article above referred to), that if the intended wife is, or if, during the coverture, she or the intended husband in her right shall become entitled to any real or personal property of a certain value or upwards, for any estate or interest (except jewels, &c., which are to belong to her for her separate use), the husband and wife, and all other necessary parties will assure the property to the trustees. As regards separate property, this form is rightly considered by Mr. Davidson (3 Conv. p. 572, n. e.) to include it; but we would suggest, by the way, that, although the conjunction "and," between "husband" and "wife," may be read distributively, the introduction of the words "and each of them" is desirable, inasmuch as the wife would be the sole assuring party of any separate personalty.

Comprehensive, with regard to the property to be assured by husband and wife, as the words of the common form appear to be in the generality of the expression, "She or the intended husband, in her right, shall become entitled for any estate or interest," there is yet an estate or interest of the wife which is held not to be bound. In the present case the words of the agreement were, "That if at any time or times during the said coverture, they, the said John Edye and Jane Bell, or either of them, in her right, should, by gift, devise, &c., become entitled to any real or personal estate," &c. (other than interests for her life, or for her separate use), then and in every such case, the same should be settled upon the trusts thereinbefore declared. Neither this agreement, it is seen, nor the future act of settling was confined to the husband; nevertheless, the words defining the estate to be settled, which do not appear to be substantially narrower than those in the common form, were held not to include real and personal property devised and bequeathed to the wife and her husband, their heirs, executors, administrators, and assigns, as joint tenants. It should be mentioned that the agreement recited in the settlement was that any future fortune or property to which the wife might "thereafter become entitled," should be settled on the trusts thereinafter mentioned. The Vice-Chancellor said that the property described in the covenant might be of three kinds—first, whatever came to the husband and wife in the wife's right; secondly, what the husband took in the wife's right; thirdly, what the wife took in her own right. This property came under neither class; it was given to the two in *their* right, not in the wife's right alone.

The decision turned upon the peculiar view which the law takes of a gift to husband and wife—namely, that it is like a gift to one person (Litt. s. 291), or, as it is commonly expressed, husband and wife take by entirety. The attempt in the will to give them an estate as joint tenants was repugnant. An endeavour was made in counsel's argument to give an equitable construction to the gift, on a *cy près* principle, that the Court would, as far as possible, give effect to the testator's wish that the husband and wife should take as joint tenants, so that a moiety should be settled as coming in right of the wife. But it is scarcely necessary to remark that, in interpreting such a gift, equity follows the law. Mr. Preston's statement of the law in the 1st volume of his Estates, p. 131, is so full and clear, that we extract it. The phrase tenant by entirety is one more often used than understood. Under such a devise, "the husband and wife have not either a joint estate, or sole or several estate, nor even an estate in common. From the unity of their persons by marriage, they have the estate entirely as one individual, and on the death of one of them the entire tenement will, for all the estate of which they are seised in this manner, belong to the survivor, without the power of alienation or forfeiture of either alone to prejudice the right of the other." In fact, while joint tenants are two or more persons constituting one tenant, co-parceners two or more females making one heir, tenants by entirety are two persons making one person.

The difficulty of subjecting the legal construction of a gift made to husband and wife to equitable doctrines respecting the wife's property has shown itself in the enforcement of her equity to a settlement. Thus, in *Atcheson* v. *Atcheson*, 11 Beav. 485, where the gift was to R. S. A., his wife, and children, the husband and wife were held to be entitled to one entire share only, as one person; and, it not being ascertainable what belonged to the wife separately, or what the husband was entitled to in her right, Lord Langdale was unable to decide out of what portion of the legacy a settlement could be made upon her, according to the rules of the court. He thought that all which the Court could do for the protection of the wife, and to give her any separate benefit of the legacy, was, to preserve her right to it by survivorship, by preventing the husband from defeating it by alienation in her lifetime. The Court, therefore, kept the fund in its hands. The alienation referred to by Lord Langdale will not be confounded with a disposition *jure mariti*. An alienation wrongful, but *de facto*, without notice of the wife's interest, was, no doubt, meant. Where the order of the devisees is the reverse of that in *Atcheson* v. *Atcheson*, and the gift is equally between them, without "and" before the husband, as, "equally between my brother A., my sister B., my nephew C., and D. his wife," they being at the same time all equally next of kin to the testatrix (*Warrington* v. *Warrington*, 2 Hare 54), the husband and wife take each a share.

A gift of the remainder of the testator's property, to be invested in the funds, the interest to be appropriated to the use of his son and his son's wife, for their lives, was decided by the present Master of the Rolls, though it could not create a joint tenancy, to entitle the son's widow to the income during her life. The testator meant to give some benefit to the wife: *Moffat* v. *Burnie*, 2 W. R. 83.

In the present case, regard being had to the words of the agreement, there can be no question that there was, under the will, both a "right" and an "estate" in which the wife was interested, still she had no estate in her right, or any estate or right, since, for any such purpose, her personality was inseparable from that of her husband. They had a right and an estate, but not either of them had the one or the other. Such, in this country, are the metaphysics, wise or unwise, of the law of husband and wife in relation to property given to them. If, to be artificial were to be scientific, it might well be said that law is a science. No little science of a certain kind seems to be necessary in order to frame a formula which shall carry out the intention of the parties to a settlement, in bringing within it the wife's future property; and, after exerting all his skill, the conveyancer only ends by landing the parties in the Court of Chancery. To the artificial basis of our law, that husband and wife are one, when in reality they are not one, is to be attributed the necessity of creating whole branches of equitable, or, as it might be called, excretionary jurisdiction, such as the law of separate use and of the wife's equity for a settlement. Now, that the marriage-contract itself has become assimilated to other

contracts, in the modes of making, modifying, and rescinding it, the Lord Chancellor, who effected that change, may perhaps consider whether the whole law of husband and wife, in respect of property and contracts relating to property or value, may not be put on a footing consistent with the habits of the age. Need it be insisted that the wife is no longer a *feme* reduced to a civil nonentity, because she cannot perform feudal services in company with her *baron?* There does not seem to be any insuperable difficulty in enacting, as part of a code, that a gift to husband and wife shall receive the same construction as a gift to any other two persons. Further, let it be considered whether not only tenancy by entirety but joint tenancy also—another feudal relic—may not give place to tenancy in common, as the rational, no less than the most convenient interpretation of a simple beneficial gift to A. and B., in every case.

## COMPANIES' LAW.

WINDING-UP—EXECUTION CREDITOR.

*Re Great Ship Company*, M.R., 12 W.R. 117; LL.J., *Ibid.* 139.

This case has raised one of the most important questions under the new Act—namely, whether a creditor who had recovered judgment and taken the property of the company in execution before the presentation of the winding-up petition, could be restrained from proceeding to a sale? Sir J. Romilly, M.R., held that he could be so restrained, upon the ground that the intention in winding-up was an equal distribution of the assets among all the creditors, and that section 87 of the Act made the winding-up to operate as an injunction. The words of that section are, "When an order has been made for winding up a company under this Act, no suit, action, or other proceeding, shall be proceeded with or commenced against the company, except with the leave of the Court, and subject to such terms as the Court may impose." Section 84 provides that "a winding up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding-up;" and section 85 enables the Court, at any time after the presentation of the petition for winding up, to restrain further proceedings in any action, suit, or proceeding, against the company, upon such terms as the Court may think fit. His Honour was therefore of opinion that he had jurisdiction in the above-named case to restrain the execution creditor from proceeding to a sale. The Lords Justices, however, reversed this decision upon the ground that, although the Court might have a discretion under the Act, yet that the discretion ought not to be exercised against a just creditor in lawful possession under an execution, before the petition was presented. Their Lordships pronounced no opinion upon the question, whether a sale under an execution was such a proceeding as, within the meaning of the Act, might be restained by the injunction of the Court; but assuming that the Court had discretion to grant an injunction, they declined to do so. The decision cannot therefore be regarded as an authority for the proposition that every creditor who obtains execution before the petition is presented can proceed to enforce his rights after an order for winding-up has been made, or after a petition has been presented; but it is an authority for the proposition that a case must be made out to induce the Court to interfere with such rights.

Those of our readers who have read the report of the case at the Rolls, and also on appeal, have probably been a little puzzled by the circumstance that in the two courts, *different* parts of the Act were taken to be applicable to the case. The company was constituted under the Act of 1856, and the sections referred to by the Master of the Rolls are included in Part IV., which relates to "the winding-up of companies and associations under this Act." Section 201 is contained in Part VIII., of the Act, which makes the Act applicable to "unregistered" companies; while section 197 does not appear to have been cited, probably because the company was not *re*-registered, and so did not come within Part VII., which relates to companies "authorised to register under this Act." In the *Torquay Bath Company's case*, 11 W. R. 653, however, the Master of the Rolls held that a company registered under the Act of 1856, but not under the Act of 1862, was not an unregistered company within the meaning of Part VIII.; and if the decision in that case was correct, section 201 had no application at all in the above-named case. Great confusion and uncertainty has been produced by the insertion in different parts of the Act of very similar clauses—namely, sections 85, 87, 197, 198, 201, and 202, without any apparent object whatever for the repetition.

Upon the particular point in question in the above-named case, Lord Justice Turner made the following observations:—"Considering the 201st section of the Act, and leaving out of consideration the question whether a sale under the execution would or would not have been a proceeding within that section (on which I give no opinion), I think that, according to that section, power is given to the Court to exercise a discretion whether proceedings should or should not be restrained by the order of the Court. The question is, what are the circumstances which ought to guide the Court in the exercise of this discretion? In my opinion, the Court is bound to look at the legal rights of the parties, and to the interests, not of one class only, but of each particular class of creditors who may be affected by its decision. There is nothing in this Act to give to general creditors any rights to have their interests consulted in preference to the interests of particular creditors whose case comes before the Court. It is the duty of the Court to hold an even hand over the interests of all parties. I think the section was meant with the view to meet cases in which there might have been unfair proceedings on the part of creditors. Above all, the Court is bound, in considering the question as to the exercise of its discretion, to see what its duty would have been if the order to wind-up had been actually made, and an application had been made by a creditor for leave to issue execution. In this case I cannot see on what grounds the Court could have refused to this creditor leave to proceed under the execution. His judgment was fairly obtained, without any suspicion of fraud, and after great opposition. Execution on that judgment was duly issued, and property was duly seized under that execution, and there was nothing to stop it, except the power given to the Court by section 201. With all deference to the opinion of the Master of the Rolls, I think that his discretion was not properly exercised, and that the injunction ought to be dissolved. The appellant must have his costs both here and in the Court below."

## COMMON LAW.

MUTUAL RIGHTS OF ADJOINING LANDOWNERS IN THE WORKING OF MINES AS REGARDS THE FLOW OF WATER.

*Baird and Others* v. *Williamson and Others*, C. P., 12 W. R. 150.

There is surely no maxim in jurisprudence which defines more reasonably the proper limits to the enjoyment of each man's own property, than the maxim "*sic utere tuo ut alienum non lædas*, and yet it seems that in the application of the principle to cases in which the differences between neighbouring mine workers or between neighbouring riparians come under consideration, there are difficulties which prevent any valuable use of the doctrine.

We could hardly venture to assert that, in the present state of the law, a man may carry on a lawful trade inside his own boundary, and yet not be liable in damages to his neighbours, although the laws of nature carry the effluvium, or the smoke arising from the processes of his manufacture, into his neighbour's house.

Nor, in a somewhat similar case, would it seem safe, in the case of the pollution of a running stream by refuse from manufactories, to desert the well-established doctrines of adverse user and acquiescence, and to rely upon a defence which would consist of the assertion of the right to carry on a lawful manufacture on the owner's freehold, and of non-liability for the gravitation of refuse liquids into the nearest stream. Nevertheless, in the case which we have cited at the head of this article, it seems that the judgment of the Chief Justice does justify, if it does not also absolutely sanction, nuisances which result by the operation of the laws of nature from the lawful enjoyment by a man of his own property.

In this case the action was brought by the owner of a plot of land adjoining to that of the defendants. Two parallel seams of ironstone cropped out on the surface of the ground inside the area of defendant's land. These seams took a downward course in a slanting direction, passed through the boundary of defendant's land, and entered the plaintiff's. Both plaintiff and defendant had worked out the upper of the two seams, and neither left any barrier to prevent the flow of water from the higher level inside defendant's boundary, into the lower part of the seam, inside the plaintiff's boundary. The defendants seem to have enjoyed, without any obstruction, the privilege of draining water from their higher level down through the boundary into the plaintiff's lower level, until, for the purpose of obtaining ore from the second, lower, and hitherto unworked seam, the defendant opened a crut or passage from the first seam into the second seam by what must have been an ascending tunnel, and thereby, besides affording to himself the means of obtaining the ore from the second seam, drained away by gravitation the water which percolated into the cavities made by mining, and permitted such water to flow down the crut abovementioned into the old seam, and so forward into the plaintiff's lower portion of it. The plaintiff thereupon brought his action and alleged in substance that he was not called upon to bear any flow of water which was not the natural percolation into what we have called the first seam. The crut was proved to have been made in the usual and proper manner for the purpose of getting the minerals in the seam to which it was driven, and the Court held that the defendants were not liable for injury caused by water which flowed by gravitation from the works so constructed. But it will be remarked that, in respect of other water pumped up from a third seam in a lower stratum in the defendants' land, and which water was raised and discharged down the first seam through the boundary upon the plaintiff's at the lower level, the Court held "that the defendants had no right to be active agents in sending water to the lower mine." This decision would (as we submit, with the greatest respect for the Court which pronounced it) be exceedingly valuable as affording a principle upon which to rest the decision of other cases, if it were easy to reconcile the various parts of the judgment, or even if it were probable that other Courts would accept and apply with reasonable modifications, the doctrine that landowners are not responsible for the operation of the laws of nature. It is impossible to deny that courts of equity do accept and act upon considerations of expediency, of general usage, and of what we may term local reasonableness; but, even these Courts decline to admit, as a right, the privilege of irresponsibility for nuisances caused—for example, by the action of the wind upon noxious vapours. It would, we think, be unfair not to impose some limit to the doctrine of *Baird* v. *Williamson*; and yet, if the case is upheld and relied upon, what is to prevent a landowner on a hill-side from quarrying or mining by a horizontal tunnel, and discharging an indefinite volume of deleterious or dirty water upon the property of every landowner below him, and between him and the sea. The Court, in the case we are commenting upon, certainly forbids a landowner to be "an active agent" in sending down water, but there is some difficulty in understanding how the defendants were not active agents in producing the grievances complained of. It is surely no answer to allege on their behalf that their primary, and possibly their sole purpose in driving the crut to the second seam was to win the ore from it and not to abstract water, for it is evident that no water was coming from the second seam until they opened a tunnel into it, and, in the hypothetical case which we have put of a landowner flooding the lower part of a hill-side, it could not be denied that he would be an active agent in letting loose the water imprisoned in the subterranean reservoirs in the hill, although his right to quarry and mine would, under the present case of *Baird* v. *Williamson*, protect him from the consequences of incidental damage to his neighbours, arising from the operation of the laws of gravitation. As regards our objection that it does not seem easy to reconcile the various parts of the judgment in *Baird* v. *Williamson*, we mean simply this,—that it is a difficult thing for us not to perceive that the defendants were as clearly "active agents" in sending down water from the second seam upon the plaintiffs by the crut, as they were by pumping up water from the third or lowest seam. They certainly did not, with respect to the water last mentioned, allow the simple law of gravitation to operate upon that water, which, in consequence, descended upon the plaintiffs, because they pumped up such water to the level at which, and at which only, they could avail themselves of the law of nature; but, as we said before, if the defendants had not constructed the crut, and made thereby a channel for water, and an appliance for the action of the laws of gravitation, the water from the second seam would not, and, upon the evidence, could not, have flowed down upon the plaintiffs. The defendants seem to us, therefore, to have been "active agents" in respect to both volumes of water, and we cannot see how they can be held irresponsible for the discharge of one, if not of both. Assuming, however, that the case is sound law, and that our difficulties of interpretation are peculiar to ourselves, we look upon the case as one of great importance, and accept with gratitude a clear decision upon vexed questions which have not yet, in our opinion, been so distinctly referred to definite principles for solution.

The Lord Chief Justice, in reference to the position of the plaintiffs with regard to the flow of water, which was determined not to be an actionable injury, said that if the occupiers of the lower mine (*i.e.*, the plaintiffs) intended to guard against the operation, they must have a barrier in the upper part of the mine to pen back the water of their higher neighbour." He then proceeds in the following sentence:—"The law imposing the regulations for the enjoyment of conflicting interest does not authorize the occupiers of the higher mine to interfere with the gravitation of water, so as to make it more injurious to the occupiers of the lower mine." We should be glad if we could feel quite sure that the actual decision which the learned judge had just pronounced did not permit such interference; and further, we should be glad to be better satisfied than we are, (with all respect for the Court,) that, according to the *rationale* of the decision, the plaintiffs could lawfully build a barrier in the seam, even on their own side of the boundary, to pen back water which the defendants were held legally entitled to discharge, or that the plaintiffs could (changing a word only to suit the altered case) "interfere with the gravitation of water so as to make it more injurious to the occupiers of the *higher* mine." Our readers will perceive that if, as is usual in such cases, the neighbours had left a barrier at each side of the common boundary, to prevent the continuous flow of water down the course of the stratum, the case of *Baird* v. *Williamson* would not have arisen. But, there being no barrier, and the decision being that the operation of the laws of nature created, *damnum absque injurid*, our doubt is, whether that principle should not be carried to its logical consequences, and be held in the case as it stands, to protect as well as excuse the defendants.

## COURTS.

### COURT OF CHANCERY.

(Before the LORD CHANCELLOR in Bankruptcy.)

Dec. 12.—*Ex parte Roberts, Re Holden.*—Mr. *Little* appeared in support of a petition asking that the books of the bankrupt, a solicitor, which it was alleged had been sold by public auction, might be delivered up to the petitioner, the purchaser.

The LORD CHANCELLOR inquired how the books of a solicitor, which might contain confidential communications of dealings with his clients, could be the subject of a sale, especially of a public sale.

Mr. *Little* said he conceived they came within the operation of section 137 of the Bankruptcy Act 1861 which authorised the sale of a bankrupt's books as part of his estate.

The LORD CHANCELLOR said that in construing that provision in the statute, the subject-matter of the sale must be looked to. The books of a solicitor could not be regarded in the same light as those of a grocer, but in a certain sense must be considered as the property of his clients, which he held in trust for the purpose of guarding their legal rights. The proper course to be taken by assignees in the case of a bankrupt solicitor was to give notice to all the clients, and to hand over to each of them such of the books and papers as related to his affairs, upon payment of any bill of costs that might be owing. It was the duty of assignees to collect the debts of the bankrupt, but they possessed no power to sell a current suit or a current bill of costs, or to hand over to other parties memorandums of clients given by them confidentially to a solicitor. He had seldom heard so monstrous a proposition, and it was an attempt which ought never to have been entertained. The fact was, that the assignees, instead of doing themselves the duty imposed upon them by law, had appointed a manager, at unnecessary expense, to do the work for them.

The application must be refused with costs.

(Before the LORDS JUSTICES.)

Dec. 15.—The only case in the paper to-day was the appeal of *White* v. *Cardiganshire Railway Company*, but when the Lords Justices took their seat no counsel appeared on either side. On the case being called, and there being no answer,

Lord Justice KNIGHT BRUCE said—Strike the case out. It is wanting in common attention on the part of all concerned not to have given information to the Court before this.

The Court then rose for the day.

### COURT OF BANKRUPTCY.

(Before Mr. Commissioner FANE.)

Dec. 12.—*In re Charles Bianconi, jun.*—The bankrupt, who is the son of the well-known Irish car proprietor, described himself of the New Inn Hotel, Seaford, in the county of Sussex, of no profession or employ. The unsecured debts amount to £8,133; there are no assets.

Mr. *Reed* appeared on behalf of several creditors, and applied that the petition should be dismissed on the ground that there had been no sufficient residence within the jurisdiction of this court, or any court within the meaning of the Act of Parliament, to give the bankrupt a right to petition. He said:—the point is one of considerable importance; and the point to which I shall call your attention is this—whether a person who resides in Ireland, where the great majority of his creditors reside, is entitled to come to England for the purposes of the Act; his residence in this country being clearly temporary, and for a specific purpose connected with the Act. The bankrupt was resident in Ireland up to the 18th of April, 1863. He then comes to England, and takes up his abode at the Seaford Hotel, in Sussex, where he remained until he filed his petition on the 6th of August following. In his petition he says—"Your petitioner having resided for the longest period, that is for three months and two weeks within the six months preceding the date of the filing of his petition to this honourable Court." I shall now, sir, call your attention to the fact that the bankrupt has eighty-four creditors—of whom forty-seven reside in Ireland, thirty in France, five in England, and one in Brussels. The debts in Ireland amount to £6,833. The whole unsecured debts of the bankrupt amount to £8,133, and out of that amount no less than £6,833 is due to creditors in Ireland. I have now to call your attention to the 86th section of the Act of 1861, which states that any debtor may petition for an adjudication of bankruptcy against himself, and that the filing of such petition shall be deemed an act of bankruptcy. The 87th section enacts that the proceedings to obtain an adjudication of bankruptcy shall be by petition, on oath of the petitioner, and that every such petition shall be filed for record, and presented as directed by the Act, and that every petition for adjudication shall be filed in the Court of Bankruptcy within the district of which such debtor has resided or carried on business for the period of six months next immediately preceding the time of filing of such petition, or for the longest period during such six months. The bankrupt here had never carried on business either in England or elsewhere. His description of himself is, that he is a gentleman, and of no occupation. He never did carry on business, and, therefore, he does not come under the first denomination mentioned in the section; consequently ,he must fall back on this principle, that he has resided in England prior to filing his petition. The question now is, whether a person coming over to England for a temporary purpose, and putting up at an hotel for a short time for the purpose of accomplishing that purpose, can have himself adjudged a bankrupt under the English Act. I submit, sir, that he cannot, and that Mr. Bianconi having come to this country for a specific purpose, which purpose was to get rid of his debts, did not create for himself a residence within the meaning of the Act. Mr. Reed then contended that as the bankrupt had admitted he had only resided three months and two weeks at Seaford, and that he had only come to England to acquire a domicile, and with the intention of relieving himself from his debts, he was not entitled to petition. He further contended that this residence by the bankrupt at an hotel was not a residence contemplated by the Legislature. He referred to the case of *Munro* v. *Munro* 7 Cl. & Fin. 842.

Mr. *Sargood*, for the bankrupt.—I have to object to the form of this application. The course is, that an application for the dismissal of a petition for adjudication in bankruptcy, must be by petition, and I contend that you cannot hear this application except on petition. The obvious reason for this is, that if the application were not by petition, there would be no record of it, and nothing would be left on the files of the Court to show what had been done.

The COMMISSIONER.—I think there is a great deal of force in that.

Mr. *Reed*.—I submit, sir, that there is really no force in it. This application comes before the Court attached to the proceedings themselves, and with the sanction of the Court, who fixed a day for it. The real question for you is, whether this gentleman ought not to go back to Ireland where he came from.

Mr. *Sargood*.—I maintain, sir, that my objections to this application being disposed of on a motion are good. In a petition the facts relied on would be stated. Here you have none of the facts on record. The application for an adjudication in bankruptcy being by petition, the application to have the petition dismissed must be by petition. This is not merely for form sake. The application is a most important one, destroying, as it would, if granted, the jurisdiction of the Court itself. If it were made by petition, then a copy of the petition would be served on the bankrupt, and he would be called on to answer it; but how do we stand on this motion? There is nothing to show that the bankrupt knows anything about it, and yet you are asked to destroy the jurisdiction of the Court, and to destroy the interests of all creditors not concurring in the application, and all the interests which may have accrued in consequence of the proceedings in this matter.

The COMMISSIONER.—It is clear that this bankruptcy ought to be adjudicated in Ireland. The question is, as to the form in which the present application should be made. It is clearly a case where the petition ought to be dismissed; but as Mr. Sargood has raised the objection that the application does not come before me in proper form, Mr. Reed will take nothing by his motion. It is obvious that justice cannot be done if the proceedings are carried on in this court; but, having regard to Mr. Sargood's objection, the application must be dismissed, with liberty to renew it upon petition.

Costs reserved.

(Before Mr. Commissioner GOULBURN.)

Dec. 14.—*In re James Henry Clayton.*—The bankrupt, an attorney and solicitor, of 12, Serle-street, Lincoln's-inn, and 4, Guildford-street, came up for examination. The debts are returned at £2,890, as against assets doubtful. The bankrupt attributes his failure to insufficiency of capital and smallness of earnings during a long period of ill-health, the payment of

large sums for interest, and losses through the death of a client.

Mr. *Bagley*, for the assignees, said that the bankrupt had not filed the necessary accounts. He believed the assets of the estate consisted, to a great extent, of bills of costs due from the bankrupt's clients, and, inasmuch as the assignees were desirous of having the bankrupt's assistance in reference to the realisation of the assets, he proposed an adjournment for three months.

Messrs. *Hughes & Co.*, for the bankrupt, did not oppose the application.

Adjourned accordingly.

Dec. 16.—*In re Henry Mills Sparham.*—The bankrupt was an attorney and solicitor, of 10, Basinghall-street. This case has already been noticed in our columns.

Judgment was now given, upon the bankrupt's application for an order of discharge.

His HONOUR said, this case was fully discussed some ten days ago. It is, to my mind, a case of considerable importance,—a case where a person, placed in a position of the highest trust and confidence, has so conducted himself as to call for severe reprobation and censure. I will shortly state the circumstances:—The bankrupt has been for some time in practice as a solicitor. He appears to have been started in business by his father and father-in-law, who advanced him money for that purpose. Those advances he could not repay, and he has been getting more and more behind-hand ever since. He now owe £5,000 debts and liabilities, without a farthing of assets for anyone. It is now alleged against him that he has contracted debts without any reasonable expectation of being able to pay them. It is also said that he has been guilty of unjustifiable extravagance in living. The particular case brought forward in opposition is that of Mr. Lockington. As to the contraction of the debts generally, it is perfectly clear that the bankrupt could have had no reasonable expectation of being able to pay. The opposition of Mr. Lockington is a personal one. It appears that Mr. Lockington had been introduced to the bankrupt for the purpose of enforcing payment of debts due to Mr. Lockington from Tucker and other debtors. The bankrupt received bills for the amounts of the debts, discounted them, and appropriated the proceeds to his own use. From that moment to the present, Mr. Lockington has been unable to obtain payment from the bankrupt. Now, conduct of this kind in a solicitor seems to me to amount to a gross fraud. Such a proceeding cannot be tolerated. If it were, there would be at once an end of those confidential relations which ought to subsist between solicitor and client. I am of opinion, also, that the expenses of the bankrupt are unjustifiably large. The order of discharge must be suspended for nine months; six of which will be without protection.

## BANKRUPTCY RETURNS.—LONDON DISTRICT.

Returns showing the number of clerks in each of the official assignees' offices in Bankruptcy, with the amount of salaries paid to each; also the remuneration allowed for rent and other expenses, and the gross amount of remuneration paid into the Bank of England to the credit of the Chief Registrar's Account by each official assignee, for the period between the 11th of October, 1861, and the 11th of April, 1863.

### RETURN OF MR. GEORGE J. GRAHAM.

| Number of Clerks. | Amount of Salary paid to each Clerk. | Rate of Salary per annum. | Per-centage Allowed to Clerks on Recovery of Debts. | Remuneration allowed to Official Assignees for Rent and other Expenses (excepting Clerks' Salaries). | Surplus of Fees or Remuneration paid into the Bank of England to the Credit of the Chief Registrar's Account. |
|---|---|---|---|---|---|
| | £ s. | £ s. | | £ s. d. | £ s. d. |
| 1 | 425 0 | 250 0 | .. | | |
| 1 | 232 10 | 155 0 | .. | | |
| 1 | 225 0 | 150 0 | .. | 239 0 11 | *29 2 11 |
| 1 | 217 10 | 145 0 | .. | 189 17 4 | †839 9 8 |
| 1 | 144 0 | 96 0 | .. | 156 18 2 | ‡981 9 9 |
| 1 | 135 0 | 90 0 | .. | | |
| 1 | 97 10 | 65 0 | .. | | |
| 1 | 31 4 | 20 16 | .. | | |
| 8 | 1507 14 | 971 16 | .. | 585 16 5 | 1850 4 4 |

* April 11, 1862. † Oct. 11, 1862. ‡ April 11, 1836.

July 28, 1863. GEORGE J. GRAHAM.

### RETURN OE MR. WILLIAM BELL.

| Number of Clerks. | Amount of Salary paid to each Clerk. | Rate of Salary per annum. | Per-centage Allowed to Clerks on Recovery of Debts. | Remuneration allowed to Official Assignees for Rent, &c. | Surplus of Fees or Remuneration paid into the Bank of England, &c. |
|---|---|---|---|---|---|
| | £ | £ | £ s. | £ s. d. | £ s. d. |
| 1 | 405 | 300 | 24 19 | 379 13 0 | 151 12 11 |
| 1 | 205 | 150 | | | |
| 1 | 165 | 120 | | | |
| 3 | 775 | 570 | 24 19 | 379 13 0 | 151 12 11 |

July 21, 1863. WILLIAM BELL, Official Assignee.

### RETURN OF MR. HERBERT HARRIS CANNAN.

| Number of Clerks. | Amount of Salary paid to each Clerk. | Rate of Salary per annum. | Per-centage Allowed to Clerks on Recovery of Debts. | Remuneration allowed to Official Assignees for Rent, &c. | Surplus of Fees or Remuneration paid into the Bank of England, &c. |
|---|---|---|---|---|---|
| | £ | £ | £ s. d. | £ s. d. | £ s. d. |
| 1 | 600 | 400 | 42 17 6 | 904 5 7 | 2325 12 0 |
| 1 | 375 | 250 | 42 17 6 | | |
| 1 | 175 | 120 | 42 17 6 | | |
| 1 | 45 | 40 | | | |
| 1 | 39 | 26 | | | |
| 5 | 1234 | 833 | 128 12 6 | 904 5 7 | 2325 12 0 |

July 16, 1863. H. H. CANNAN, Official Assignee.

### RETURN OF MR. HATTON HAMER STANSFELD.

| Number of Clerks. | Amount of Salary paid to each Clerk. | Rate of Salary per annum. | Per-centage Allowed to Clerks on Recovery of Debts. | Remuneration allowed to Official Assignees for Rent, &c. | Surplus of Fees or Remuneration paid into the Bank of England, &c. |
|---|---|---|---|---|---|
| | £ s. d | £ s. d. | £ s. d. | £ s. d. | £ s. d. |
| 1 | 290 0 0 | 188 6 8 | | | |
| 1 | 241 10 0 | 156 0 0 | | | |
| 1 | 60 0 0 | 120 0 0 | | | |
| 1 | 108 17 4 | 72 12 0 | 40 3 10 | 568 7 5 | 1582 12 3 |
| 1 | 87 5 0 | 58 3 4 | 40 3 11 | | |
| 1 | 61 9 0 | 78 0 0 | | | |
| 1 | 62 8 0 | 65 0 0 | | | |
| 1 | 18 15 0 | 65 0 0 | | | |
| 8 | 930 4 4 | 803 2 0 | 80 7 9 | 568 7 5 | 1582 12 3 |

For H. H. STANSFELD, Official Assignee,
ROBERT HELM.

### RETURN OF MR. EDWARD WATKIN EDWARDS.

| Number of Clerks. | Amount of Salary paid to each Clerk. | Rate of Salary per annum. | Per-centage Allowed to Clerks on Recovery of Debts. | Remuneration allowed to Official Assignees for Rent, &c. | Surplus of Fees or Remuneration paid into the Bank of England, &c. |
|---|---|---|---|---|---|
| | £ | £ | £ s. d. | £ s. d. | £ s. d. |
| 1 | 450 | 300 | 23 2 2 | 1250 12 7 | 1203 2 1 |
| 1 | 575 | 250 | 23 2 2 | | |
| 1 | 180 | 120 | 23 2 2 | | |
| 1 | 145 | *100 | 23 2 2 | | |
| 4 | 1150 | 770 | 92 8 8 | 1250 12 7 | 1203 2 1 |

* This clerk's salary was paid at the rate of £90 per annum for the half-year ending April, 1862, and at the rate of £100 per annum for the year ending April, 1863.

E. W. EDWARDS, Official Assignee.

### RETURN OF MR. WILLIAM PENNELL,

For the period between the 11th of October, 1861, and the 26th of December, 1861, the date of his retirement.

| Number of Clerks. | Amount of Salary paid to each Clerk. | Rate of Salary per annum. | Per-centage Allowed to Clerks on Recovery of Debts. | Remuneration allowed to Official Assignees for Rent, &c. | Surplus of Fees or Remuneration paid into the Bank of England, &c. |
|---|---|---|---|---|---|
| | £ s. | £ | | £ s. d. | £ s. d. |
| 1 | 75 0 | 300 | | | |
| 1 | 37 10 | 150 | | | |
| 1 | 37 10 | 150 | .. | 109 6 7 | 209 2 11 |
| 1 | 30 0 | 120 | | | |
| 1 | 15 0 | 60 | | | |
| 5 | 195 0 | 780 | .. | 109 6 7 | 209 2 11 |

GEO. J. GRAHAM, Official Assignee,
as representing William Pennell, who has retired.

RETURN OF MR. PATRICK JOHNSON,

From the period between the 11th of October, 1861, and the 11th of April, 1862, after which last-named date Mr. Johnson retired.

| Number of Clerks. | Amount of Salary paid to each Clerk. | Rate of Salary per annum. | Per-centage Allowed to Clerks on Recovery of Debts. | Remuneration allowed to Official Assignees for Rent, &c. | Surplus of Fees or Remuneration paid into the Bank of England, &c. |
|---|---|---|---|---|---|
| | £ | £ | | £ s. d. | £ s. d. |
| 1 | 75 | 150 | | | |
| 1 | 60 | 120 | | | |
| 1 | 50 | 100 | | | |
| 1 | 40 | 80 | .. | 144 6 1 | 85 12 4 |
| 1 | 39 | 78 | | | |
| 1 | 26 | 52 | | | |
| 6 | 290 | 580 | .. | 144 6 1 | 85 12 4 |

P. JOHNSON.

## WINTER ASSIZES.

### NORTHERN CIRCUIT.

#### LIVERPOOL.

Crown Court.—(Before Mr. Justice WILLES.)

Dec. 14.—In the case of Mary Mooney, indicted for manslaughter, Mr. Preston had, on Saturday, made an application for an order of his Lordship that the depositions of a material witness, who was too ill to attend, might be read before the grand jury. These depositions had been taken before the coroner, and, in the absence of any statute on the subject assimilating the practice in such cases to that in respect of depositions taken before magistrates, his Lordship thought the case too serious for him to grant the application. To-day, however, his Lordship said he should allow the depositions to go before the grand jury, and if the prisoner should be convicted he would reserve the case for the Court of Criminal Appeal, in order that the question might be determined.

#### YORK.

Dec. 14.—Patrick Hirley, 25, was indicted for the wilful murder of Anthony Golding, at Leeds, on the 23rd of August last.

Evidence having been given in support of the prosecution, the jury retired to consider their verdict, and returned into court after an absence of rather more than an hour.

The Clerk of the Arraigns (Mr. Holtby).—Gentlemen, have you agreed upon your verdict? Do you find Patrick Hirley guilty or not guilty.

The Foreman (Mr. Brailsford, of Sheffield).—We find him guilty of murder, but the jury wish me to add that it is their unanimous feeling that, while in the conscientious discharge of their duty they have felt bound, accepting the definition of murder as laid down by the judge, to return that verdict, they feel equally strong that the circumstances of the case are such as to remove it out of the number calling for the extreme penalty of the law. It is their hope that his Lordship will cause such a representation of their feeling to be laid before the Home Secretary; and it has only been the belief that their strong representation of the circumstances to his Lordship would be effective, which has induced them to agree to the verdict. They have felt that, while, on the one hand, they were discharging their duty in accepting the law from the learned judge and acting upon it, on the other hand, they have a strong opinion that the difference of circumstances in the case from those of many others coming under the definition of murder make it one in which the authorities might suitably exercise the prerogative of mercy.

His LORDSHIP.—Gentlemen, your recommendation shall be attended to, but you must permit me to observe that I regret extremely to hear you have been driven only to a conscientious verdict of guilty of murder by the belief that the sentence would not be carried into execution. I am bound to say that it is not a proper view for a jury to take. The jury have nothing to do with the punishment. They must act upon the law of the land, and unless juries do that there is no safety for any one. But whilst I say that, I am quite sure you have most carefully, deliberately, and conscientiously in this case considered your verdict, and I will most assuredly make such a representation to the Home Secretary as you desire. I have no power to say what the effect of such representation will be, but it shall be made, and made in the spirit in which you desire it.

The learned judge then passed sentence of death upon the prisoner.

## GENERAL CORRESPONDENCE.

### JUDGE-MADE LAW.

On reading the speech of Mr. Daniel, Q.C., at the late meeting at Lincoln's-inn, to consider the present system of law reporting, I was forcibly reminded of passages in an author now, I understand, obsolete, though I am myself fond of recurring to them. The passages I allude to and enclose as bearing upon the subject of law reporting, are from "Gulliver's Travels"—a dull old book, superseded, I am told, by the prodigious wit and vast genius displayed in "Nickleby," "Pickwick," "Pendennis," and other works of modern fiction; but I prefer Gulliver, as per sample. F. P.

Dec. 16.

The following is the extract referred to:—

"I described the courts of justice over which those venerable sages and interpreters of the law presided for determining the disputed rights and properties of men. His Majesty desired to be satisfied, among other points, whether the judges had any part in penning those laws which they assumed the liberty of interpreting and glossing upon at their pleasure.

"I informed him that the judges are persons appointed to decide all controversies of property, as well as for the trial of criminals, and are picked out from the most dexterous lawyers. It is a maxim among these lawyers that whatever has been done before may legally be done again; and, therefore, they take special care to record all the decisions formerly made. These, under the name of precedents, they produce as authorities to justify the most iniquitous opinions."

## APPOINTMENTS.

Mr. FREDERICK WILLIAM DENNY, of 3, Hanover-park, Peckham, has been appointed a London commissioner to administer oaths in the High Court of Chancery. Mr. Denny has also been appointed a London commissioner to administer oaths in common law in the courts of Queen's Bench, Common Pleas, and Exchequer.

## SCOTLAND.

At a meeting of the Glasgow Faculty of Procurators, last week, Mr. A. Bannatyne, Dean of the Faculty, presiding, it was announced that Mr. George Baillie, late sheriff-substitute, of the western district of Perthshire, had executed certain deeds conveying the sum of £18,000, to the Dean and Council of the Faculty, as trustees, for the erection of free libraries and public schools. The sum so conveyed is at present invested in good movable securities, and the income derivable from the estate is to be accumulated for twenty-one years. At the end of that period it is expected that the sum conveyed will, at compound interest, amount to fully £40,000. With this sum Mr. Baillie contemplates the erection of one or more free public libraries, as the trustees shall then deem expedient, to be constructed on the principle of the public free library established by Mr. Brown, in Liverpool. Another object which Mr. Baillie has in view, if the funds should admit of its being carried out, is the establishment of public schools for the poorer classes, in which education will be given at such moderate fees as the trustees may think fit to exact. The usual powers are given to the trustees to acquire buildings either by purchase or lease, and the rules and regulations are to be prepared by the Council of the Faculty, subject to the revisal of the Faculty itself. The meeting resolved to authorise the Dean and Council to accept of the trust conferred on them, and to express to Mr. Baillie their gratification at his disinterested gift.

## IRELAND.

### COURT OF CHANCERY.

Dec. 15.—*The Earl of Egmont* v. *Sir Lionel Darrell and Others.*—This case, in which an issue was directed by the Lord Chancellor, to try the validity of the will of the late Earl of Egmont, and which was compromised after the issue had been some time at hearing at the Cork Summer Assizes, now came before this court to have the consent then entered into made a rule of court.

The *Solicitor-General* stated that in pursuance of the agree-

ment the present Earl of Egmont had brought in £125,000, and invested it consols, and the parties undertook to proceed to obtain an Act of Parliament to legalise the proceeding, as there were minors in the case, the children of Sir Lionel Darrel. It was proposed to have a reference to the master to ascertain what portion of the sum of £125,000 represented the Churchtown Estate, and what portion represented the Kanturk Estate, and to settle the draft of an Act of Parliament which was to be obtained. Until the Act was obtained Sir Lionel Darrell would receive the dividends on £125,000, and Lord Egmont would receive the rents after November, 1863.

*Serjeant Sullivan* said, Lady Tierney, the widow of the son of Sir Edward Tierney, who is entitled to a jointure of £500 out of one of the estates, was no party to the arrangement; but, to prevent any difficulty, it had been arranged that the estate was to be held by Lord Egmont subject to her rights.

Dr. *Ball* said, counsel for the minors were satisfied that the arrangements were for their benefit.

The LORD CHANCELLOR made the usual decree, making the consent a rule of court, and referring it to the master for the purpose above stated, and counsel for the minors having stated that the arrangement was in the interest of the minors, his Lordship declared that it was for their advantage.

## CONSISTORIAL COURT.

(Before Judge BATTERSBY.)

RIGHT TO ALMS COLLECTED AT PROPRIETARY CHAPEL.

Dec. 5.—*The Office at the promotion of the Rev. Launcelot Dowdall* v. *The Rev. James Hewitt.*—This case, which is a proceeding by the rector of the parish of Rathfarnham against the incumbent of Zion Church, Rathgar, in which the former asserts his right to the distribution of the alms collected in that church, was argued on a former day, and stood over for judgment.

Judge BATTERSBY now gave judgment as follows:—This is a suit promoted by the Rev. Launcelot Dowdall, rector of the parish of Rathfarnham, against the Rev. James Hewitt, incumbent or perpetual curate of Zion Church, Rathgar, in the same parish, to compel the latter to pay over the alms collected in said church, according to law, and that he may abstain from misapplying the same in future. The pleading states that these alms to have been collected at the "offertory" as sacramental alms. No such proceeding as this has been taken in Ireland before, except in the case of *Magee* v. *The Bishop of Cashel*, and from the statements made on the last court day it would appear that the present suit has arisen not so much from a desire to settle the right to this offertory as, from the circumstance that upon Mr. Hewitt's appointment to the perpetual curacy of Zion Church he insisted on a title to discharge the duties of rector, or some of them, throughout the whole parish of Rathfarnham, a title which Mr. Dowdall denied, to prevent Mr. Hewitt getting a footing in the parish by having a district assigned to his church, pursuant to the statute in that behalf. Mr. Dowdall refused to consent to the assignment of such district by the Archbishop, and commenced this suit. If Mr. Hewitt made such claim he mistook his rights, for, as curate, with a district, he could not go beyond it, and, not having a district, as the fact is, he could not perform any of the offices of a minister out of his own chapel, without incurring severe penalties. Mr. Dowdall, on the last court day, was willing to consent that a district should be assigned to Zion Church, and that the right to the offertory should be referred to the Archbishop. Mr. Hewitt postponed until this day his assent to, or dissent from, that proposition, and he now refuses it. The first question seems to be, what is the offertory? The term appears to signify both that part of the Communion Service which is read while the alms are being collected, and the alms then given. Rubric, Ed. II. 6 Gib. Coden, 474, it is said—"Whyle the clerks do sing the offertory, so many as are disposed shall offer to the poor men's box, every one according to his habilitie and charitable mind." Ayliff in his Parergon, 393, says—"It was always the custom for the communicants to offer something at receiving the Sacrament, as well for holy uses as for the relief of the poor, which custom is, or ought to be, observed at this day." Before the Reformation, it appears that the priests of proprietary chapels were in the habit of taking these offerings to themselves, to the prejudice of the incumbents of the parish; and to prevent this it was provided by a legation constitution of Othobon, Cardinal Legate, 52 Hen. III., A.D. 1267, quoted 1 Bolingbroke, Ec. L. 279, that—"When a private person desires a proper chapel, and a bishop grants it for a just cause, yet he always uses to add, so that it be done without prejudice to the right of another. And we, pursuing the same wholesome method, ordain and strictly charge, that the chaplains ministering in such chapels as have been granted with a saving to the rights of the mother Church, restore to the rectors of that Church, without making any difficulty, all the oblations and other things which ought to come to the mother Church, if they had not intercepted them, and which, therefore, they cannot in justice retain. If any one refuse to do it let him be suspended till he hath made restitution.' In Synod Consis. 112, n. a., it says—"This extends to perpetual curates, as well as those who are only temporary and stipendiary."

The offertory was anciently for the use of the priest, but at the Reformation it was changed into alms for the poor—1 Burn. Ec. L. 370; Ayliff Parergon, 394. Ayliff says that this change was made by the statute 25 H. VIII., which abolished altar oblations to the priests; but, however this may be, it is clear, that at this day, according to the rubric, "Money given at the offertory shall be disposed of to such pious and charitable uses as the minister and churchwardens shall think fit, wherein if they disagree, it shall be disposed of as the ordinary shall appoint." Now, who are "the ministers and churchwardens?" Are they those of the parish church only? or are they officiating clergymen and churchwardens of every chapel included in the words of the rubric? The Act of Uniformity, 17 & 18 Car. 2, c. 6, s. 1, recites, "That nothing conduceth more to the honour of God, the settling of the peace of a nation, which is desired of all good men, nor to the advancement of religion, than an universal agreement in the public worship of Almighty God. That both houses of Convocation had presented unto his Majesty's Lord Lieutenant one book, hereunto annexed, intitnled, 'The Book of Common Prayer,' &c. Therefore, to the intent that the greatly desirable work of uniformity in Divine worship may be obtained, and that every person within this realm may certainly know the rule to which he is to conform in public worship and administration of sacraments, and other rites and ceremonies of the Church of Ireland, enacts that all ministers shall be bound to say and use the morning prayer, in such order and form as is mentioned in the said book." And by s. 2, "Every minister shall openly, publicly, and solemnly read the morning and evening prayer, by and according to said Book of Common Prayer; and after such reading, shall openly and publicly, before the congregation there assembled, declare his unfeigned assent and consent to the use of all things in the said book contained and prescribed on pain of deprivation." Now, that book, in the part relating to the Communion Service, provides that "whilst the sentences of the offertory are in reading, the deacons, churchwardens, or other fit persons appointed for that purpose, shall receive the alms for the poor, and other donations of the people, in a decent basin to be provided by the parish for that purpose." And, subsequently, that after Divine service is ended, the money given at the offertory shall be disposed of as I before said. The law on this subject was fully considered and explained by Sir John Nichol in the case of *Massey* v. *Hillcoott*, 2 Hag. 30. That was a suit promoted in 1828 by Dr. Massey, rector of the parish of Valcot, to compel Dr. Hillcoott, owner and officiating minister of the chapel of Queen's-square, licensed on the nomination of the same Dr. Massey, to pay over to said rector and the churchwardens of said parish, the money collected in the offertory of the said chapel. The licence of Dr. Hillcoott was nearly in the same words as that of Mr. Hewitt, except that the former authorised the performance of "all ecclesiastical duties belonging to said office," which authority is not included in the licence to Mr. Hewitt; and the latter also excepts baptism and marriages. Dr. Massey had acted himself as curate of the chapel, and as such received some offerings while curate, which he afterwards claimed as rector from the succeeding curate. Dr. Hillcoott insisted that the sacramental alms received in the chapel had been constantly, since the opening thereof in 1735, at the uncontrolled disposal of the minister therein officiating, and of the proprietors thereof. Sir John Nichol, p. 44, says, *prima facie*, "All parochial duties are committed to, and imposed upon the parish incumbent, and all fees and emoluments, arising from the performance of those duties, in like manner belong to him. Of common right all parochial dues, whether from tithes or other sources, belong to the presentee of the patron."—P. 49. "Chapels possess no parochial rights unless acquired" (by grant, &c.)—P. 53. "I am not aware of any chapels where the patrons or proprietors (forming themselves into a sort of joint-stock company) can appropriate a portion of the church dues."—P. 54. "The nomination appoints Dr. Hillcoott to perform the office of officiating minister of Queen's-square chapel, &c. There is nothing that

appoints Dr. Hillcoott to the exercise of all parochial rights, to the cure of souls, and to the occasional administration of offices to all the inhabitants, and in all parts of the parish; it does not grant anything which belonged to Dr. Massey, as rector, neither the parochial duties, nor the surplice fees, nor the power of interfering and intromitting in all rights, duties, and offices, which had been committed to Dr. Massey as incumbent of the parish."—P. 56. "The alms received during the reading of the offertory before the Communion, are specially directed by the rubric to be collected in a decent basin, to be provided by the parish, which shows that the collection, wherever made, is a parochial matter, with which persons connected with a private chapel have no concern. Again, after the Divine service is ended, the money given to the offertory shall be disposed to such pious and charitable uses as the minister and churchwardens shall think fit, wherein, if they disagree, it shall be disposed of as the ordinary shall appoint."

These directions as to the "parish" and the "churchwardens," who are officers of the parish, and not of the chapel, lead me also to construe the "minister" to mean "the minister of the parish," and they show that the rubric intended that alms received at the Communion, as well at private chapels as in the parish church, should be at the disposal of the minister of the parish and of the churchwardens, and should not belong to the officiating minister, nor to the proprietors of such chapel. In any view that I am able to take of this case, I cannot consider that this chapel has acquired any legal rights at all encroaching upon the parochial rights which belong to the parochial incumbent, beyond those which he has directly and specifically contested—viz., the performance of public service for the accommodation of those who take pews. To the emoluments arising from those pews, Dr. Hillcoott, uniting both characters of officiating minister and sole proprietor, is entitled; but to them he is limited. Here is no district, no chapelry which connects any particular inhabitant with this chapel; here is nothing carved out of the parish, nor out of the parochial rights of the rector. The general duties of the parish rest upon the rector; he is bound to perform them, and he is entitled to all the emoluments derived from them. It is the policy of the law to keep these duties entire and simple, unless they have been sub-divided and parcelled out by competent authority. In "Watson's Clergyman's Law," 312, referring to the Statute of Uniformity, it is said, "If, in reading the morning and evening prayers, the minister shall stand or sit when he is directed to kneel, or kneel or sit when he should stand, or shall read them in other order than is appointed, or shall omit anything that is appointed to be read on certain days, or misplace the prayers in reading them, or read in one day what is appointed to be read on another, or do not celebrate and administer the Sacrament in such order and form as is appointed, he is punishable by law;" which shows that the rubric must be implicitly obeyed. Mr. Hewitt's advocates admit that down to the passing of the Act 14 & 15 Vict. c. 72, in the year 1851, Zion Chapel would have been considered a proprietary chapel, as described by Sir John Nichol; but they say that this statute, by sections 2, 23, and 27, is made a perpetual cure and benefice, and the officiating clergyman therein a perpetual curate and incumbent, and, therefore, that he had acquired within his chapel all the rights which the incumbent of the parish and churchwardens previously had. But the words "incumbent" and "benifice" confer no right or power, and whether perpetual or temporary, the clergyman of a proprietary church is not complete incumbent with all the attributes of a rector. The latter can baptise, and solemnize matrimony, when admitted and instituted, without any special licence—Wat. Ecl. Law, 147. Mr. Hewitt can do neither, for these matters are expressly excepted from his licence; and he is but a curate, though a perpetual one, having authority to the extent of his licence, but no further or otherwise. And even if he had a district assigned to his church, under section 13, by section 14 it is provided that "nothing therein contained shall be construed to discharge the incumbent of any such parish, a portion of which shall be included in any such district, or any other ecclesiastical person having cure of souls within the same, or his successors, from the cure of souls or other parochial duties in any such district, but the said cure of souls shall remain as heretofore." From which it plainly appears that the rector is not ousted of any of his rights by the appointment of a curate, though an independent one, to perform Divine service within the chapel, or even beyond it, to the extent of his district, if a district be assigned to him, which has not been done here.

But it has been urged that by sections 25 and 27, chapelwardens may be elected, who shall have the like authority within the said church or chapel as churchwardens in the care of a parish church have, and shall be competent to recover, by all proper means and proceedings, the pew rents and other dues belonging to the said church or chapel, and that, therefore, the curate and chapelwardens are entitled to receive and distribute the offertory. These sections, however, do not mention the offertory as the English Act does, and they appear to apply only to the ordering of matters within the church, and to the recovering of pew rents and such things as may be legally recovered, but not to the offertory, which is purely voluntary as a part of the ceremony, and cannot be recovered, if refused by the communicants. It is to be observed, too, that so far as appears upon the libel before the Court, no chapelwardens of Zion Church have been appointed, and the claim of Mr. Hewitt is, to receive this offertory himself, and to distribute it amongst his congregation as he thinks proper, without the assistance or control of any churchwardens or chapelwardens. This would involve a state of things wholly unknown to the Church. The congregation of Zion Church consists of the pew-holders and the occupiers of free seats, without reference to, or any connection with, any particular parish or district. Mr. Hewitt cannot visit as clergyman, or go through any parish in order to ascertain the state of the parishioners. Section 14 allows him, "the case of the sick and other pastoral duties," only in case of a district being assigned to his church; and, if he were to distribute the offertory, where his licence confines him within his own chapel, he could only do so to such persons as might come there for alms, no matter from whence, unless he and his trustees and pew-holders should think proper to divide it amongst themselves.

A forcible argument against Mr. Hewitt's view of the statute arises from the English Act, 8 & 9 Vict. c. 70, s. 6, which provides for the appointment of churchwardens for district chapelries, and enacts that money given at the offertory at such churches shall be disposed of by the minister and churchwardens of such church, in the same manner as the money given at the offertory at any parish church is by law directed to be disposed of by the minister and churchwardens of such parish. There is no such provision in any Irish Act. Section 7 of the same English Act provides for the appointment of churchwardens for any new church without a district, and does not authorise them to interfere with the offertory but enacts that if a district be assigned to such a church, they shall thenceforth have the same power as churchwardens appointed under the previous section. Thus showing that the Legislature considered that, without express words to the contrary, the right of the rector and churchwardens to the offertory would continue in a parochial district, and that in the case of a church without a district, it ought not to be taken from them. In the case of *Magee* v. *The Bishop of Cashel*, 9 I. E. R. 319, before Lord St. Leonards, it appeared to have been conceded by all parties that the offertory received in a proprietary chapel belonged to the incumbent and churchwardens of the parish, and not to the curate or trustees. But the case went off on another point.

The case of *Reg.* v. *Poor Law Commissioners*, 2 J. & S. 7, has been relied on, as showing that the minister of a district church is the minister meant by the rubric. It seems to me to point the other way, and to show that in such a case the rector of the parish continues rector of the district with all his original rights and privileges, except only the right in the curate to officiate in his district. In that case the district of Grangegorman was made a "separate and distinct district or parish," under the statute 7 & 8 Geo. IV., c. 43, ss. 23-4-5-6; and by s. 29 it was enacted, "That every such district or new parish to be formed under the authority of that Act, should have all parochial rights by law appertaining to any parish for the purposes in that Act mentioned, and for all other purposes whatever in like manner, to all intents and purposes as other parishes may by law be entitled unto; and that every such district or new parish shall be discharged and exempted from all claims and charges whatsoever as part of any former parish or parishes, saving, nevertheless, to the rectors or incumbents of the several adjoining parishes and their successors all their rights as rectors or incumbents of the respective portions of such districts." Napier's Act does not contain any such terms as the foregoing, nor does it anywhere profess to confer upon the curate a parish or parochial rights; and yet, in that case, it was held that under the Poor Law Act, 1 & 2 Vict. c. 56, which provides that in the appointment of a chaplain, preference should be given to some clergyman of the Established Church officiating within the parish in which such workhouse should be situated, the rector, or vicar, of the

original parish continued to be the principal clergyman "officiating" within the district or the parish, and the person responsible for the due administration of spiritual duties towards the inmates of the poorhouse, and that upon the refusal of the perpetual curate, the curate of the parish was entitled to the appointment.

The Court of Queen's Bench thus taking the same view of the subject as Sir John Nichol, I cannot see any privilege or power in a perpetual curate, under Napier's Act, which the curate before Sir John Nichol had not. Both derive authority from the bishop's licence; and from that only, of the two, the licence of the former was, if anything, the more comprehensive, and I am bound by the authority of that eminent judge. But, taking the judgments of the two courts together, it is plain that both looked upon the incumbent of the parish as still continuing rector of that part of the parish within which the new church is, and, as such, minister for all matters not expressly taken out of his control by statute, which the offertory was not; and therefore he, as such minister, and the churchwardens of the parish are the persons to dispose of the offertory, whether collected in the parish church or in other churches or chapels within the parish. On this motion the Court has no power to do more than either admit the pleading to proof or reject it. But it is clear, and, indeed, admitted by the advocates at both sides, that down to the year 1851 the curate of a proprietary chapel could not interfere with the neighbouring parishioners, nor take to himself, or for his own purposes, the money contributed at the offertory. For the reasons already given, it appears to the Court that the law continues the same now as it was before in the case of the curate of a proprietary chapel, without churchwardens and without a district, such as Mr. Hewitt appears to be. The apparent object of the law is to leave the rector of a parish to discharge the duties of it upon his own responsibility and without the interference of other persons, who might, perhaps, be gifted with more zeal than discretion; and for this reason, even the bishop, without the consent of the incumbent, cannot authorise any clergyman to interfere in his parish. Whether the law in this respect be wise, it is not for this Court to say; but being as it is, this motion must be refused with costs, and the libel admitted to proof, and a day assigned to Mr. Hewitt to answer it.

Dr. *Ball* asked, did the Court think, considering the difficulty of the question involved in this case, that costs should be given?

Judge BATTERSBY said that Sir John Nicol had, in the case which he had cited, ruled that there should be no costs if the case went no farther. He would do the same in the present case, but he understood it was intended to appeal.

Counsel for the promovent—Dr. *Walsh*, Q.C., instructed by Mr. Samuels. For the impugnant—Dr. *Ball*, Q.C., instructed by Mr. Worthington.

## BANKRUPTCY AND INSOLVENCY COURT.

(Before Judge Lynch.)

Dec. 16.—*In re Samuel Bell Carpenter.*—The insolvent was an attorney. His discharge was opposed by Mr. Watters, on behalf of Mr. Teeling, and by Mr. Buchanan, instructed by Ardill and Stephens, on behalf of Mr. Caulfield. The insolvent was, at a former period, in prison for debt in the Four Courts, Marshalsea. While there, he was ordered on one occasion by Mr. Teeling, who was Inspector of the Marshalsea, to be put into the punishment cell, where he was confined for eight hours. On his release from prison, he brought an action against Mr. Teeling, which resulted in a verdict for the defendant. Mr. Teeling's present opposition was founded on his proceeding to recover the costs of that action, which he complained of as vexatious. The oppositon of Mr. Caulfield was grounded on a verdict which he had obtained in an action brought against him by the insolvent, for having, as the insolvent alleged, refused to allow him into the prison to see a client.

Mr. *Heron*, Q.C., instructed by Mr. M'Nally, appeared for the insolvent.

Judge LYNCH remanded the insolvent for a month.

# FOREIGN TRIBUNALS & JURISPRUDENCE.

## AMERICA.

### MILITARY AND CIVIL LAW IN NEW ORLEANS.

A case of peculiar interest recently came before the Second District Court of New Orleans. Certain creditors applied to the court to compel the executors of a Mr. S. F. Slatter to give security within thirty days, for the administration of the estate, or, on failure, to comply that they be deprived of the trust. The executors pleaded that they had been prevented from administering the trust by superior force, and were not protected by the court. In substantiation of this plea they read the following letter:—"Office Chief Quarter-master Department of the Gulf, New Orleans, April 24, 1863. Ed. Barnett, executor, estate of S. F. Slatter. Sir,—Please render me your account of the City Hotel property, of the leases, notes, money received for rent or otherwise, for the said estate from its various tenants, in compliance with order No. 82. Your early attention will oblige, yours respectfully, John W. M'Clure, Captain A.Q.M." Mr. Barnett replied that he was accountable only to the law officer of the court, and that he was informed by counsel that the order No. 82 had no application to him. He was ready to obey any military order, but the No. 82 order applied to agents of disloyal persons, which position he did not occupy. To this reply the following extraordinary letter was sent:—"Office Chief Quarter-master, April 7, 1863. Sir,—I demand a compliance with my request for a full report of all money, interests, and profits of the Slatter estate. Military law does not recognise the courts in this or any other case. John W. M'Clure, Captain A.Q.M." The result was that the executors were partly compelled to give up the property in question. Judge Whittaker, in giving judgment in this case, denounced the action of the military authorities as "subversive of rights heretofore respected among civilized nations—the right of widows, minors, and orphans." Recently Brigadier-General Stone, of General Banks' staff, on being summoned before the United States District Court for contempt, took with him a guard of soldiers.

## AUSTRIA.

The following is an account of the termination of a political trial in Austria which has lasted for nearly two years:—"At the beginning of the year 1862, a number of the principal citizens of Venice were arrested and charged before a military tribunal with aiding in the evasion of young men from Venetia, to avoid military service in the Austrian army. The trial lasted throughout the year, and in January, 1863, fresh arrests took place, and other prisoners were included in the same charge as those first mentioned, which caused a further delay. At length, in June last the tribunal condemned seventeen of the accused to terms of from one to four years' imprisonment in a fortress; seven were acquitted for want of sufficient proof, and two were pardoned, although at the residence of one of those last named the papers on which the whole prosecution was based had been found. Five of the principal accused were, however, detained, without any decision being announced, their sentence having been forwarded to Vienna for approval. The Supreme Military Court of Vienna has now, after five months' reflection, returned the sentences to Venice, confirmed, and the prisoners at last know their fate;—the advocate Clemente Fusinato is condemned to sixteen years' imprisonment in a fortress; Count Marolin to fourteen years', and MM. Brinis, dal Bò, and Zanetti to twelve years of the same punishment."

## ITALY.

### NEW MARRIAGE LAW.

The keeper of the Seals has brought forward his bill for the establishment of the civil contract of marriage throughout the kingdom. The following is a portion of the preamble of the proposed law:—

"The adversaries of the civil marriage, while recognising in the State the right to exercise a certain influence in this question, maintain that this right should exist on equal terms with that of the ecclesiastical power. Experiments have been made to secure this double object, but their result has been to prove the necessity of giving exclusive prominence to the civil law, in consequence of the impossibility of avoiding conflicts between the two powers, to the detriment of both. If, for instance, the State were to prescribe a certain form of religious ceremony, it would invade the principle of individual liberty, while, by insisting on the accompaniment of a religious rite, it would violate the liberty of religion. The best course is for each to remain within its own sphere. It is incumbent on the State to regulate the mode in which a new family is constituted, and to determine its legal rights. Marriage may receive a still higher—the religious—sanction, but with this the State, as such, has nothing to do."

## PRUSSIA.

The following account of the system of legal education

adopted in Prussia is taken from the late Mr. Austin's Tract On the Uses of the Study of Jurisprudence:—

The advantage of the study of common principles and distinctions and of history, considered as a preparative for the study of one's own particular system, is fully appreciated in Prussia: a country whose administrators, for practical skill, are at least on a level with those of any country in Europe.

In the Prussian universities, little or no attention is given by the Law Faculty to the actual law of the country. Their studies are wholly or almost entirely confined to the general principles of law—to the Roman, Canon, and Feudal law, as the sources of the actual system: the Government trusting that those who are acquainted with such general principles and with the historical basis of the actual system, will acquire that actual system more readily, as well as more groundedly, than if they had at once set down to the study of it, or tried to acquire it empirically.

"In the Prussian states," says Von Savigny, "ever since the establishment of the Landrecht, no order of study has ever been prescribed; and this freedom from restraint, sanctioned by the former experience of the German universities, has never been infringed upon. Even the number of professors, formerly required on account of the Common Law (*Gemeines Recht*), has not been reduced, and the curators of the universities have never led either the professors or the students to believe, that a part of the lectures, formerly necessary, were likely to be dispensed with. Originally it was thought advisable that, in each university, one chair at least should be set apart for the Prussian law, and a considerable prize was offered for the best manual. But even this was subsequently no longer required; and up to the present time the Prussian law has not been taught at the university of Berlin. The established examinations are formed upon the same principle; the first, on the entrance into real matters of business, turning exclusively on the Common Law: the next period is set apart for the directly practical education of the jurisconsults; and the two following examinations are the first that have the Landrecht for their subject-matter; at the same time, however, without excluding the common law. At present, therefore, juridical education is considered to consist of two halves—the first half (the university) including only the learned groundwork; the second, on the other hand, having for its object the knowledge of the Landrecht, the knowledge of the Prussian procedure, and practical skill.

## COLONIAL TRIBUNALS & JURISPRUDENCE.

### AUSTRALIA.

#### Melbourne.

From a recent communication from this colony, it appears that Ministers are busy in the preparation of measures for next session. Mr. Heales, the Minister of Lands and Survey, will have to lay before Parliament a new Land Bill. Mr. Sullivan, the Minister of Mines, is engaged in the preparation of a new measure for the management of the gold-fields, mining enterprise being now largely in the hands of capitalists, and requiring all the aid that careful legislation can give, to the enforcement of men's rights. The law officers are partly engaged in the consolidation and abridgment of the statute law, much of which came down from New South Wales at the time of the separation from that colony, and is now scarcely applicable to the circumstances of Victoria. Parliament, it was thought, would not go into important business until after the Christmas holidays.

### BRITISH COLUMBIA.

#### Official Salaries.

By proclamation the Governor has enacted that the salaries of British Columbian officials shall be as follows:—Governor, with a suitable residence properly furnished, £3,000; Judge of the Supreme Court, £1,200; Colonial Secretary, £800; Attorney-General, with practice, £500; Treasurer, £750; Commissioner of Lands and Surveyor-General, £800; Collector of Customs, £650; Chief Inspector of Police, £500, Registrar-General, £500.

## REVIEW.

*The Law of Compensations, by Arbitration and by Jury, under the Lands and Railway Clauses Acts, with an Appendix of Statutes and Forms.* By Charles Wordsworth, Esq., Q.C., Counsel to and Associate Member of the Institution of Civil Engineers. Shaw & Son. 1863.

This work treats of the acquisition, by arbitration and by jury, of lands and other property by railway, dock, and other companies. It is, as the learned author remarks, merely a collection of adjudged cases upon the subject, but one which will be found useful to such of our readers who are engaged in the conduct of such cases.

## SOCIETIES AND INSTITUTIONS.

### THE SOCIETY OF ARTS.

#### The Laws of Naval Blockade.

Mr. G. W. Hastings resumed his course of "Cantor Lectures," on the subject of "The Operation of the Present Laws of Naval Warfare on International Commerce," on the 14th instant, in the Society of Arts Rooms, John-street, Adelphi, the section being "The Laws of Blockade." Mr. Hawes occupied the chair. The lecturer, having briefly touched upon the origin and history of naval blockades, proceeded to point out the present laws by which they were governed, remarking that international law was always in an unsettled state, and therefore, it was impossible to lay down any exact history of it. A blockade to be legal must be clearly established, and notice of its existence given to all ships attempting to trade to the blockaded ports. According to the English and American law, which were precisely similar, this could be done, either by notoriety, notice to the governments of all countries whose ships traded at the port, or notice to the ship itself. The continental law differed, however, from this, it being held that no ship could be seized for breaking the blockade, unless notice were given to the master of the ship itself. The continental law, with regard to what constituted a blockade, also differed materially from that of England,—the former holding that the blockade could not be legally established unless the blockading squading was stationary, and sufficiently numerous to place ships within range of any vessel attempting to pass between them, whilst by English and American law it was sufficient that there should be a force of ships large enough and so near the port as to cause manifest danger to vessels attempting to enter it. He then proceeded to point out the effect of blockade upon international commerce, remarking that there was not a country in the world which was productive of any amount of industry which was not dependant upon every other country for something, and, therefore, must necessarily suffer by any important port being closed up, and it was not probable that they would much longer submit to being injured by another's quarrel. In conclusion, Mr. Hastings brought forward arguments both for an against the continuance of commercial blockades, stating that they were sure, at no very distant time, to come to an end, as they were beginning, with all the facilities for international communication, to become useless; for instance, when one port on the Continent was blockaded, its trade, with the assistance of the railways, could be carried on, with very little inconvenience, from a neutral port.

### ON THE FUSION OF LAW AND EQUITY.

At the Leicester meeting of the Metropolitan and Provincial Law Association, Mr. J. O. Watson, of Liverpool, read a paper on the above subject. It was as follows:—

By the expression "Fusion of Law and Equity" (not an accurate expression), seems to be intended the blending of our two systems of law and equity into one, still preserving the rights at present designated legal or equitable as parts of that one system, but vesting the jurisdiction for the administration of those rights in one or more court or courts of concurrent jurisdiction. Equitable rights are, as it were, an extension of legal rights. Thus, while the law in general gives damages only for a breach of contract, equity in certain cases enforces the performance of the contract specifically; and, while at law the estate becomes vested absolutely in a mortgagee by non-payment on the day, equity still gives a right to redeem.

The justice of these rules cannot be impugned. But it has been said, why should not the courts of law be empowered to give the same relief? Why should they not be empowered to compel the vendor to convey the purchased land, or the mortgagee to re-convey the mortgaged premises, although the day named for re-payment has passed? So in reference to other matters, which, in our present system, fall exclusively within the jurisdiction of courts of equity (for instance, trusts and ad-

the Common Law Commissioners to its full extent, particu-
administration of the estates of deceased persons), why should not courts of law be empowered to entertain suits? Hence, it appears, that what is termed "Fusion of Law and Equity" has reference, not to legal rights, but to the jurisdiction and the rules of procedure by which these rights are administered. Now, in the first place, it may be observed, that if concurrent jurisdiction were given to our courts of law and courts of equity, the amount of litigation would be the same; for in proportion as the business of the courts of equity would be decreased, the business of the courts of law would be increased—and so *e converso*. Nor would the expense be diminished, with the exception only in cases of empowering every court to give full relief and enforce its own decrees, without the aid of any other court; for the machinery necessary to the due exercise of the present equitable jurisdiction would have to be transferred to the courts of law, with the transfer of the business of the courts of equity; and references which, in courts of equity, are at present made to the chief clerks, would, if the business were transferred to courts of law, have to be made to a similar officer of those courts. The number of such officers would have to be increased, for the present staff of each of the courts of law is but barely adequate to the discharge of its present duties.

But the great and important question is—suppose the whole judicature of the country were vested in one or more courts of concurrent jurisdiction, would justice be better or even as well administered? Would the proceedings and judgments of the courts be distinguished by a superior, or even the same degree of ability as at present? Our present courts of law and courts of equity have each a bar composed of gentlemen, whose studies and practice have been peculiarly directed to their respective particular branches of judicature; and, according to the commonly received notions of the division of labour, such a bar may well be supposed to be better versed in the science of that branch of judicature to which its attention has been mainly directed than it would be if called upon to act and practise indiscriminately in that and other branches. And the same observations may be made with reference to the presiding judges.

A letter, entitled "Fusion Practicable," has been lately addressed, by James John Aston, Esq., of the Inner Temple, to the Lord Chancellor, and published (the author states) by his Lordship's permission; and, as such permission was not requisite to the publication of the letter, the granting of it may be thought to indicate that the scheme proposed by the author has, in some degree, found favour in the eye of the Lord Chancellor.

The author contends "that the remedy for the present unsatisfactory state of things is to give to all the courts concurrent jurisdiction, and, ultimately, to establish a uniformity of courts and of process." He has annexed to the letter the draft of a short Act of Parliament, which, he says, attempts to deal with the question of jurisdiction. By the first section he proposes to enact that the superior courts of law and equity at Westminster shall have one and the same jurisdiction, and, for all purposes of jurisdiction, be considered as branches of one and the same court. But then, as if conscious of the necessity of a distribution of the business of this one court among its branches, with a due regard to the relief sought, and questions to be decided, he proposes by the third section to invest the Lord Chancellor with power to regulate what business may be transacted in each of the branches of this one court. By a subsequent section, he proposes that the Master of the Rolls and the three Vice-Chancellors shall form part of the Court now called the Exchequer Chamber; and that appeals from the decisions of the Master of the Rolls or any Vice-Chancellor, may be to the Court of Exchequer Chamber, and thence to the House of Lords. But when we see the Lords Justices and the Lord Chancellor almost exclusively occupied with hearing appeals from the Master of the Rolls and the three Vice-Chancellors, it is evident that the Court of Exchequer Chamber, so constituted, would be quite inadequate to the hearing of the appeals from those four courts. Besides, the Court of Exchequer Chamber is not in reality the only court of appeal at law prior to the appeal to the House of Lords; for motions for new trials and the like in the courts of law are, in reality, appeals from the decisions of judges at *Nisi Prius*.

The scheme of this author, in regard to jurisdiction, seems to differ only from the present "unsatisfactory state of things," by substituting an order of the Lord Chancellor in lieu of the rules which now define the jurisdiction of the courts. Upon the whole, therefore, it seems that a general "Fusion of Law and Equity" would be a mistake. There are, no doubt, instances where courts of equity may be properly called upon to decide questions of law, and courts of law be called upon to decide, questions of equity. But, in all such cases, the courts will probably be assisted by members of the Common Law Bar, or Equity Bar, according to the nature of the questions to be decided. And it may perhaps be said with truth, that our experience of equitable pleas is no great encouragement to persevere in that direction. Though the general "Fusion of Law and Equity" may not be desirable, or even practicable, it may be contended that every court of law, having in suits properly falling within its jurisdiction, determined the rights of the contending parties, should be empowered to give the same relief as could be obtained in, and to enforce its decrees without the aid of, a court of equity. The Common Law Commissioners, in their second report, seem to approve the principle. And it is recognised by the Legislature, to a great extent, by sections 68 & 79 of the Common Law Procedure Act, 1854, enabling courts of law to grant a mandamus for performance of any duty in the fulfilment of which the plaintiff is personally interested, and to grant injunctions to restrain the repetition or continuance of breaches of contract, or other injuries for which an action is maintainable and has been brought. But it was held, in *Benson* v. *Paul*, 25 L. J. Q. B. 274, that a party cannot be compelled, under the 68th section, to perform a contract entered into by him; so that to obtain specific performance of a contract, the plaintiff must still resort to a court of equity. In a suit by a purchaser on a contract for the purchase of land, a court of equity decrees that the vendor shall convey the specific land, on being paid the purchase-money. In an action at law on such a contract, the purchaser recovers damages only. But why should not the court of law, having determined the validity of the purchaser's claim under the contract, be empowered to direct a conveyance by the vendor? Lord Eldon says, in *Stevens* v. *Guppy*, 3 Russ. 182, that one of the old modes was to decree that the contract should be specifically performed, if it should be found that the defendant had a good title, and then to direct a reference to the master as to title. So, at law, the Court might decree a specific performance, and then refer it to an officer of the court (similar to the conveyancing counsel of the Court of Chancery) to ascertain the defendant's title, and settle the conveyance. And if it should appear that he has not a title, and is not able to make such a conveyance as the purchaser is entitled to, or is willing to accept, it might be referred back to the Court to assess the plaintiff his damages. Such a result being arrived at in a suit in equity, the purchaser has now to resort to an action at law to recover damages. The course of proceeding above suggested would avoid a separate action for that purpose. In an action at law, the vendor, on such a contract, recovers damages only for breach of contract, while a court of equity decrees payment of the specific purchase-money. Now, in order to recover damages at law, the vendor must show his ability and readiness to make such a conveyance, or that the defendant has expressly, or by his acts, dispensed with it. Then, why should not the court of law be empowered to give judgment for the specific purchase-money on a conveyance (to be settled by the officer above alluded to) being executed? So also as to chattels which pass by delivery; why should not judgment be for payment of the purchase-money on delivery of the chattels or other things contracted to be purchased?

This would have obviated the objection taken by Mr. Baron Parke, in *Laird* v. *Pim*, 7 M. & W. 475 (in which it was contended that the plaintiff, who was the vendor in a contract for sale of land, had a right to recover the amount of purchase-money), that the plaintiff would have the land and the purchase-money also. And, with regard to damages, if a vendor's bill be dismissed, a court of equity will order a return of the deposit; but for any other damage the Court will leave the purchaser to his remedy at law.

As to nuisances and obstructions of legal rights, the powers of courts of law are greatly extended by the 79th section, which empowers those courts to grant injunctions in all cases of breach of contract or other injury. But to bring a case within this section there must be a party injured, and an action brought; so that a court of law has no power to issue an injunction to restrain a threatened breach or injury. A breach or injury must have been actually committed, and the Court can then restrain its continuance. And in *Mines Royal Society* v. *Magney*, 3 W. R. 75, it was laid down that the power to grant injunctions by courts of law was confined to cases where it is to be granted without terms. The Common Law Procedure Act, 1854, therefore falls short of enabling courts of law, in cases within their jurisdiction, to give the relief which courts of equity would give, and fails to carry out the proposition of

larly in reference to injunction and the specific performance of contracts.

In conclusion, I would advert to a practice which seems to be extending itself in the courts of law. I mean references to the masters. These references are a sort of fusion of law and equity; but they appear to be directed and conducted on principles which, on the one hand, are a departure from the rules of law, and, on the other, do not govern proceedings of courts of equity. They constitute the master a sort of arbitrator. Thus, after judgment for the plaintiff, under an order where the only plea pleaded was never indebted, the Court referred it to the master to inquire whether any sums had been received by the plaintiff for which he ought to have given credit, and ordered the costs of the inquiry to be in the discretion of the master. Whereas at law such an inquiry must have been preceded by a plea of payment or set-off, and the costs would have been costs in the cause. If the defendant had pleaded payment, he must have stated the precise sum; or, if a set-off, the plaintiff would have been entitled to particulars, and thus come to the trial better prepared; or by having his attention drawn to the subject, he might have admitted the sums and thus avoided a trial. If then the rules of pleading in actions are right, such an order as this is wrong. And though courts of law ought to be empowered to give the fullest relief in cases falling within their jurisdiction, and to enforce their own decrees, yet their proceedings from the commencement to the termination of the action ought to be uniform, and not in part in conformity with the rules of law, and in other part at variance with them.

## LAW STUDENTS' JOURNAL.

### LAW LECTURES AT THE INCORPORATED LAW SOCIETY.

Mr. MONTAGUE HUGHES COOKSON, on Equity, Monday, Dec. 21.

The lectures will be resumed on Friday, the 8th of January next, and be continued to the end of the several courses in March.

## PUBLIC COMPANIES.

### PROJECTED COMPANIES.

THE CONTRACT CORPORATION (LIMITED).

Capital £4,000,000, in 40,000 shares of £100 each.

Solicitors.—Messrs. Edwards and Co., Westminster; Messrs. Daniel and Cox, Bristol.

This Company has been constituted for the purpose of undertaking the execution and construction of railways and other works, both at home and abroad, a class of business hitherto exclusively conducted by private contractors.

At a meeting of the Court of Common Council last week, a report was brought up from the Officers and Clerks' Committee, by Mr. Parker, the chairman, recommending that the future salary of the Remembrancer be £1,500, and that Mr. Tyrrell, the retiring Remembrancer, be allowed a pension of £700. Mr. Rowe, chairman of the Coal, Corn, and Finance Committee, moved an amendment to fix the salary at £1,000, but that was lost by a majority of thirty on a division, as was also another amendment fixing the stipend at £1,250. The result is, that the salary in future will be £1,500, as originally recommended by the committee. So much of the report of the committee as related to a pension to the late Remembrancer was negatived on the amendment of Mr. Causton, the prevailing opinion of the Court, as expressed by Deputy Fry, being that a man, who for a long series of years had been in the receipt of a salary from the Corporation of £2,000 a-year on an average, was not entitled to a retiring pension. Alderman Rose in vain sought to recall the Court to what he conceived to be a sense of duty, by reminding them that, for half a century, the late Remembrancer had faithfully and zealously discharged his duties, and that he had now retired at the age of seventy-two. Mr. Richardson, on the other hand, gave instances of what he conceived neglect of duty on the part of the late Remembrancer; Mr. Causton also made a charge of neglect, without specifying any particular case, reminding the Court, at the same time, that they invariably refused to entertain any application for pecuniary assistance by widows of inferior officers of the Corporation. A motion was made by Mr. Philipps that the Court should mark its sense of the Remembrancer's services by presenting him with a piece of plate worth £500, but that, too, was negatived. The matter then dropped, and the Court fixed the 14th of January as the day of election to be vacant office, at a special meeting to be summoned for the purpose.

We extract the following interesting account of the legal changes which have taken place during Lord Palmerston's ministry, from the *Western Morning News*:—The death of Mr. Justice Wightman, and the consequent vacancy upon the judicial bench, appears an opportune period for reviewing the legal changes which have taken place during the time Lord Palmerston has held the office of Prime Minister. These changes are numerous and important, and in each respect very nearly approach those which have taken place in the Church during the rule of the noble lord, and which have caused such a great amount of ecclesiastical patronage to fall into his hands. When, in the month of February, 1855, Lord Palmerston constructed a government upon the ruins of the fallen administration of Lord Aberdeen, he retained Lord Cranworth in his place upon the woolsack. In like manner Sir Alexander Cockburn and Sir Richard Bethell, who, with the Lord Chancellor, had been appointed in 1852 by the Earl of Aberdeen, were continued in their respective posts of Attorney and Solicitor General. At that time the Lord Chief Justice of England was Lord Campbell, and the judges of the Court of Queen's Bench were Justices Coleridge, Wightman, Erle, and Crompton. Her Majesty's Court of Common Pleas was presided over by Lord Chief Justice Jervis, the puisne judges being Justices Cresswell, Williams, Maule, and Crowder. Lord Chief Baron Pollock, and Barons Parke, Alderson, Platt, and Martin, constituted the Court of Exchequer. The year 1855 witnessed a vacancy in the Common Pleas, when, by the death of Mr. Justice Maule, Mr. James Shaw Willes, a leading junior on the Home Circuit, who, with Sir Alexander Cockburn and Mr. Baron Martin, had been one of the Commissioners of the Common Law Procedure, was elevated to the judicial bench. In the following year two of the judges of the Court of Exchequer, Sir James Parke and Sir Thomas Joshua Platt, retired from the bench, and their places were taken by Mr. G. W. Bramwell, Q.C., and Mr. W. H. Watson, Q.C. The death of Chief Justice Jervis, in November, 1856, gave Lord Palmerston an opportunity of rewarding the services of his Attorney-General in a substantial manner. Sir Alexander Cockburn's defence of Lord Palmerston's foreign policy on the last night of the Don Pacifico debate, in 1850, had never been forgotten by the noble lord, while the great ability shown by the Attorney-General in conducting the prosecution of William Palmer, in May, 1856, especially marked him out for promotion. So, upon the death of Sir John Jervis, Sir Alexander Cockburn was created Chief Justice of the Common Pleas, Sir Richard Bethell taking the post of Attorney-General. To the Solicitor-Generalship Lord Palmerston appointed the Right Hon. J. A. Stuart Wortley, who had represented Buteshire from the year 1842. Mr. Wortley had been for a time Judge-Advocate-General under the administration of Lord John Russell, and was afterwards Recorder of London. In January, 1857, the death of Mr. Baron Alderson occasioned in the Court of Exchequer the third vacancy within twelve months. Mr. Serjeant Channell, exchanging the coif for the ermine, was appointed the new judge. Mr. Stuart Wortley did not long hold the post of law officer of the Crown. He resigned on the ground of ill-health in May, 1857, and the appointment was given to Mr. H. S. Keating, Q.C., who, in the general election of 1852, was returned in the Liberal interest for Reading. With the establishment of the Court of Probate and Divorce, Sir Cresswell Cresswell, for sixteen years one of the justices of the Court of Common Pleas, was, in January, 1858, appointed the first Judge-Ordinary—Mr. Serjeant Byles filling the vacancy occasioned by the removal of Mr. Justice Cresswell. This was the last appointment made in Lord Palmerston's first administration, for, in the following February, the noble viscount and his colleagues resigned, consequent on the vote of the House of Commons on the Conspiracy Bill. During the time Lord Palmerston remained out of office, the only change which occurred on the Bench was the retirement of Mr. Justice Coleridge in 1858, after an experience of twenty-three years, and the elevation of Mr. Hugh Hill, Q.C., to the vacant seat in the Court of Queen's Bench. Lord Palmerston's return to power in June, 1859, was, however, the occasion of several changes. Lord Campbell, who had been Chief Justice of England from 1850, was raised to the higher dignity of Lord Chancellor; Sir Alexander Cockburn was promoted to the post vacated by Lord Campbell; while Sir William Erle, who had been one of the puisne judges of the Queen's Bench for thirteen years, was

advanced to the Chief Justiceship of the Court of Common Pleas. Mr. Colin Blackburn, one of the leading juniors on the Northern Circuit, received the judgeship in the Queen's Bench, vacant through the promotion of Sir William Erle, The following December witnessed the death of Mr. Justice Crowder. Sir H. S. Keating, who, with Sir R. Bethell, had been re-appointed a law officer of the Crown under Lord Palmerston's second administration, took the place of the deceased judge in the Court of Common Pleas, Mr. Atherton, Q.C., who, in 1852, was elected for Durham, succeeding Sir Henry Keating in the Solicitor-Generalship. In March, 1860, Mr. Baron Watson died suddenly whilst on circuit, and Mr. James Plaisted Wilde, Q.C., was appointed in his stead. The lapse of fifteen months saw another series of changes. In June, 1861, Lord Chancellor Campbell was found dead in his bed at Stratheden-house, Knightsbridge, and with the elevation of Sir Richard Bethell to the woolsack, Sir William Atherton became Attorney-General, Mr. Roundell Palmer, Q.C., taking the office of Solicitor-General. In December of the same year Sir Hugh Hill retired from the Court of Queen's Bench, and his place was filled by Mr. John Mellor, Q.C., M.P. for Nottingham. The year 1862 witnessed no legal or judicial changes whatever. In August of the present year, by the death of Sir Cresswell Cresswell, there was a vacancy in the post of Judge-Ordinary of the Court of Probate and Divorce, which was filled by the appointment of Mr. Baron Wilde. The borough of Reading, for the third time, saw one of its members elevated to a judgeship—the first having been Mr. Serjeant Talfourd—the choice now falling upon Mr. Serjeant Pigott, who had represented the town about three years. A few days only elapsed before Sir W. Atherton resigned the Attorney-Generalship; Sir Roundell Palmer, as a matter of course, taking the vacant office, the Solicitor-Generalship being given to Mr. R. P. Collier, Q.C., M.P. for Plymouth. The death of Mr. Justice Wightman placed another seat on the judicial bench at the disposal of Lord Palmerston's administration, which has been filled by the well-merited elevation of Mr. Serjeant Shee. Thus in the two governments of the present Prime Minister we have seen three Lord Chancellors, and four Attorney and six Solicitor Generals. Of his Chancellors, the first, Lord Cranworth, is still an active member of the Upper House; the second, Lord Campbell, is dead; while the third, Lord Westbury, still holds the Great Seal as keeper of the Queen's conscience. Of Lord Palmerston's Attorney-Generals, the first, Sir A. Cockburn, is now Lord Chief Justice of England; the second, Sir R. Bethell, is Lord High Chancellor; the third, Sir W. Atherton, resigned office; the fourth, Sir R. Palmer, retains it. Of his Solicitor-Generals, the first, fourth, and fifth, Sir R. Bethell, Sir W. Atherton, and Sir R. Palmer, attained to the higher position of Attorney-General, the second, Mr. Stuart Wortley, retired; the third, Sir H. Keating, became a judge; and the sixth, Sir R. P. Collier, it still in office. Of the fifteen judges of Her Majesty's three courts of common law who administered justice on Lord Palmerston's first accession to power, only four hold the same positions they occupied in February, 1855. These are Mr. Justice Crompton in the Queen's Bench, Mr. Justice Williams in the Common Pleas, and Lord Chief Baron Pollock and Mr. Baron Martin in the Exchequer. Of the remaining eleven no less than seven are dead—Chief Justices Campbell and Jervis, Justices Wightman, Cresswell, Maule, Crowder, and Baron Alderson; three have retired, Justice Coleridge, Baron Parke (now Lord Wensleydale), and Baron Platt; while one, Sir William Erle, has been promoted to a higher judicial position. Of the judges appointed since 1855, one, Mr. Baron Watson, has died; the other, Mr. Justice Hill, has retired. It is somewhat remarkable that, amid all these changes among the learned knights who preside over our courts of law, the appointments in the courts of equity remain as they were before Lord Palmerston took the office of First Lord of the Treasury. The Lords Justices in Chancery, Sir J. L. Knight Bruce, and Sir G. J. Turner still deliver elaborate judgments in Lincoln's-inn; no change has been made in either of the three Vice-Chancellors, Sir R. T. Kindersley, Sir J. Stuart, and Sir W. P. Wood; while Sir John Romilly is still known as the Master of the Rolls amid the dingy purlieus of Chancery-lane.

## BIRTHS, MARRIAGES, AND DEATHS.

### BIRTH.

BROWN—On Dec 9, the wife of William Brown, Esq., of Gray's-inn, Barrister, of a son.

### MARRIAGES.

BLUNT—PLUNKETT—On Dec 15, at High-cross, Herts, the Rev. Arthur Henry Blunt, B.A., Lecturer of St. Andrew's, Holborn, to Jessie, third surviving daughter of the late William Plunkett, Esq., Barrister-at-Law.

BIGGS—THOMPSON—On Nov 24, at St. James's Church, Chicago, United States, Charles Biggs, Esq., to Isabel, eldest daughter of Charles E. Thompson, Esq., Councillor-at-Law, of Chicago.

### DEATHS.

CLARKE—On Dec 1, William Hislop Clarke, Esq, late of 1, New-square, Lincoln's-inn.

COPEMAN—On Dec 8, aged one year, Lilian Augusta, and on Dec 12, aged 2½ years, Henry Charles Edward, only children of C. R. Copeman, Esq., Solicitor, Liverpool.

PUGH—On Dec 14, after two days' illness, Charles Pugh, Esq., of No. 9, Marlborough-place, St. John's-wood, and Vice-Chancellor Kindersley's Chambers, Stone-buildings, Lincoln's-inn, aged 65.

SARGEANT—On Dec 7, near Newhaven, Sussex, Frederick Thomas Sargeant, Esq., Barrister-at-Law, of Lincoln's-inn, London, aged 56.

WIGHTMAN—On Dec 10, at the Judges' Lodgings, York, the Hon. Mr. Justice Wightman, aged 79.

## UNCLAIMED STOCK IN THE BANK OF ENGLAND.

*The amount of Stock heretofore standing in the following Names will be transferred to the Parties claiming the same, unless other Claimants appear within Three Months:—*

NORMAN, EDWARD, Windmill-street, Finsbury, Gentleman, and Ann Norman, his wife, both deceased, £218 13s. Consols.—Claimed by Elizabeth Paine, administratrix.

PORTER, MARY, of Southwell, Notts, Spinster, deceased, £210 New Three per Cents.—Claimed by Mary Middlemass, administratrix.

## LONDON GAZETTES.

### Professional Partnerships Dissolved.

TUESDAY, Dec. 15, 1863.

Coxwell, Edwd, & Robt G. Bassett, Southampton, Attorneys-at-Law and Solicitors. Dec 12. By mutual consent.

### Windings-up of Joint Stock Companies.

FRIDAY, Dec. 11, 1863.

LIMITED IN CHANCERY.

Chesterfield New Dunston Colliery Company (Limited).—Creditors are required, on or before Jan 7, to send their names and addresses, and the particulars of their debts or claims, and the names and addresses of their solicitors, to Mr. George Augustus Cape, 3, Adelaide-pl, London-bridge, Accountant, the Official Liquidator of the said company.

Rodee Iron Ship Building Company (Limited).—Master of the Rolls order to wind up, Dec 5.

### Creditors under 22 & 23 Vict. cap. 35.

*Last Day of Claim.*

FRIDAY, Dec. 11, 1863.

Adams, James, Highbridge, Somerset, Yeoman. Jan 1. Poole, Bridgwater.

Barrat, Jas, Owen Sound, Canada. Feb 1. Barrat, Sussex-pl, Onslow-sq.

Fenton, John, Bury, Esq. Jan 31. Norris & Wood, Manch.

Fulcher, Lucy, Ipswich, Widow. Feb 12. Moor, Woodbridge.

Hunt, Harry, Edgbaston, Warwick, Gent. Feb 1. Best & Horton, Birm.

Morgan, Ann, East Moor, York, Widow. Jan 9. Weddall & Parker, Selby.

O'Connor, Denis, Prospect-pl, Southwark, Gent. March 7. Pain, Surrey-st.

Parker, Saml, Langthorp, York, Gent. March 1. Hirst & Capes, Boroughbridge.

Piddlesden, Jane, New Romney, Kent, Widow. Jan 6. Henry Stringer, New Romney.

Price, Hy Jas, Aldborough, York, Gent. March 1. Hirst & Capes, Boroughbridge.

Pyman, Jonathan, Bury St Edmonds, Grocer. Jan 30. Ion.

Saxon, John Gibson, Castle-Northwich, Chester, Brewer. Jan 31. Cheshire, Northwich.

Walton, John, Knaresborough, Manufacturer. March 1. Hirst & Capes, Boroughbridge.

Wood, Wm, Skelton, York, Esq. March 1. Hirst & Capes, Boroughbridge.

Wroth, Rev Wm Bruton, Edlesborough, Buckingham, Clerk. Jan 7. Newton & Whyley, Leighton Buzzard.

Tuesday, Dec. 15, 1863.

Adams, Jas, Highbridge, Somerset, Yeoman. Jan 1. Poole, Bridgwater.

Anderson, Ewd Wright, East Acton, Gent. Jan 30. Burgoynes & Co, Oxford-st.

Dodd, Isaac, Page's-walk, Bermondsey, Egg Merchant. March 11. Nisby Walker, Hall-pl, Lower Kennington-lane, Executor.

Grice, John, Lower Tulse-hill, Gent. Jan 15. Jenkinson, Clement's-lane.

Lane, Alfred, Chepping Wycombe, Bucks, Mealman. Jan 14. Clarke, High Wycombe.

Oakden, Mary, Yeaveley, Derby, Widow. Jan 11. Edensor & Bamford, Ashbourne, and Smith, Derby.

Price, Francis, Charlton Kings, Gloucester, Esq. March 1. Price & Son, Burford.

Randall, Eliz, Princes Risborough, Bucks, Widow. Jan 7. Clarke, High Wycombe.

Tower, Hy, Middlethorpe Manor, York, Esq. Feb 1. Leeman & Clark.

Trusted, Deborah, Ross, Hereford, Spinster. Jan 16. Lloyd, Leominster.

### Creditors under Estates in Chancery.

*Last Day of Proof.*

FRIDAY, Dec 11, 1863.

Bridger, Wm Milton, Bradford-on-Avon, Wilts, Esq, Recorder of Chichester. Jan 11. Grant v Bridger, V. C. Wood.

Buffery, Wm, Walsall, Plater. Jan 11. Stephens v Spink, M. R.

Harman, Hy, Ashtead, Surrey, Baker. Jan 15. Allen v Friday, V. C. Kindersley.

Keeling, Wm, Newport, Salop. Jan 11. Keeling v Keeling, V. C. Wood.
Lewes, Eliza Williams Anne, Llysnewydd, Carmarthen, Widow. Jan 23. Watkins v Lewes, V. C. Stuart.
Lewis, Richd, Havodtrisclod, Monmouth, Farmer. Jan 30. Williams v Lewis, V. C. Stuart.
Robertson, Andrew, Chancery-lane. Jan 23. Beale v Lamb, M. R.
Rutter, Wm, St Paul's-churchyard, Umbrella Manufacturer. Jan 25. Bowes v Rutter, V. C. Stuart.
Timpson, Mortimore, Stanhope-pl, Hampstead-rd, Builder. Jan 21. Rowe v Timpson, V. C. Stuart.
Wellsted, John, Uxbridge-rd, Ealing, Gent. Jan 7. Wellsted v Englefield, V. C. Wood.
White, Wm, Skipton, York, Carpenter. Jan 11. Robinson v White, V. C. Kindersley.

TUESDAY, Dec. 15, 1863.

Baker, John, New Sleaford, Builder. Jan 7. Wintringham v Baker, M. R.
Birch, John Braunis, Parliament-st, Westminster, Civil Engineer. Jan 9. Leigh v Birch, M. R.
Deville, Jabez, Stockport, Candlewick Manufacturer. Jan 8. Deville v Lomax, M. R.
Lewis, John, Abergavenny, Butcher. Jan 14. Knight v Lewis, V. C. Stuart.
Newton, Saml, Taunton, Gent. Jan 8. Newton v Halse, M. R.
Pratt, Jas, Lyneham, Oxford, Timber Merchant. Jan 11. Pratt v Lord, M. R.
Radford, Chas, Kilburne, Derby, Farmer. Jan 7. Brown v Langton, M. R.
Rees, Hy, Finsbury-sq, Esq, M. D. Jan 30. Williams v Rees, V. C. Stuart.
Scott, Thos Parker, Armathwaite, Cumberland, Yeoman. Jan 13. Mounsey v Longrigg, V. C. Kindersley.

## Assignments for Benefit of Creditors.

FRIDAY, Dec. 11, 1863.

Bailey, Mary Ann, All Cannings, Wilts, Widow. Nov 7. Norris, Devizes.
Lebullon, Francis, Horbury-st, Chelsea, Leather Merchant. Nov 27. Abrahams, Gresham-st.

TUESDAY, Dec. 15, 1863.

Partridge, Wm Holland, Mark-lane, Wine Merchant. Nov 16. Lawrance & Co, Old Jewry-chambers.
Rist, Saml, Wrentham, Suffolk, Miller. Nov 24. Read, Halesworth.

## Deeds registered pursuant to Bankruptcy Act, 1861.

FRIDAY, Dec. 11, 1863.

Anderson, John, Swansea, Draper. Nov 20. Conv. Reg Dec 10.
Austin, Geo, Brierley-hill, Grocer. Nov 30. Asst. Reg Dec 9.
Bragg, Fredk, Greenwich, Hosier. Nov 10. Asst. Reg Dec 8.
Cummings, Hy, Market Lavington, Wilts, Plumber, &c. Nov 10. Asst. Reg Dec 8.
Carlile, Jas, Birm, Draper. Nov 20. Asst. Reg Dec 9.
Cracknell, Thos, jun, Maida-vale, Painter. Dec 9. Asst. Reg Dec 10.
Craig, Robt, Denmark-st, Islington, Draper. Nov 16. Conv. Reg Dec 10.
Cusworth, Richd, Manch, Toy Dealer. Nov 20. Comp. Reg Dec 9.
Dowel, Benj Willat, Hammersmith, Builder. Nov 11. Comp. Reg Dec 9.
Dudley, Louisa, Stafford, Provision Dealer. Dec 5. Comp. Reg Dec 10.
Dunn, John Spencer, Wolverhampton, Soda Water Manufacturer. Nov 12. Asst. Reg Dec 10.
Ep, Andrew, Much Wenlock, Grocer. Nov 14. Asst. Reg Dec 10.
Fowler, Jas, Macclesfield, Silk Manufacturer. Dec 5. Comp. Reg Dec 7.
Gracey, Nathaniel, Tilley-st, Spitalfields, Glass and China Dealer. Nov 11. Comp. Reg Dec 9.
Gregory, Peter, Southport, Draper. Nov 19. Asst. Reg Dec 11.
Groves, Hy, Enfield, Confectioner. Dec 3. Asst. Reg Dec 9.
Hartland, Edw, Westbromwich, Builder. Nov 24. Comp. Reg Dec 11.
Heaton, Edwin Garland, Birkenhead, Chemist and Druggist. Nov 11. Asst. Reg Dec 9.
Hopkins, Alexander, Leeds, Wine Merchant. Nov 16. Asst. Reg Dec 11.
Hughes, John, Bromborough, Chester, Farmer. Nov 13. Asst. Reg Dec 8.
Leicester, Peter, Lpool, Merchant. Dec 5. Comp. Reg Dec 10.
Macers, Hy, Alscot rd, Southwark, Builder. Dec 8. Comp. Reg Dec 10.
Malby, John, Fenny Stratford, Maltster. Nov 13. Asst. Reg Dec 10.
Parker, Robt, Lpool, Hotel Keeper. Nov 20. Conv. Reg Dec 8.
Pell, Jas, Staines, Grocer. Nov 20. Conv. Reg Dec 9.
Richardson, Benj Hammand, Dewsbury, York, Dyer. Nov 14. Conv. Reg Dec 9.
Salkeld, Hy, Sunderland, Shipowner. Nov 13. Conv. Reg Dec 9.
Sergeneson, Robt, Lpool, Cooper. Dec 8. Comp. Reg Dec 10.
Vincent, John, Princes-st, Cavendish-sq, House Agent. Dec 8. Asst. Reg Dec 10.
Whman, Wm, Chipping, Lancaster, Butcher. Nov 11. Conv. Reg Dec 9.
Williams, Anne Sybil, Abergavenny, Widow, Wine Merchant. Nov 13. Asst. Reg Dec 8.
Williams, Wm, Swansea, Boot Maker. Nov 26. Conv. Reg Dec 11.
Winter, Alonzo Geo Turner, & John Marshall, Nottingham, Silk Merchants. Dec 8. Comp. Reg Dec 10.

TUESDAY, Dec. 15, 1863.

Atkin, Jas, Kingston-upon-Hull, Tallow Chandler. Nov 17. Conv. Reg Dec 12.
Barge, Robt, Portslade, Sussex, Victualler. Dec 8. Asst. Reg Dec 14.
Bebro, Benj, Marcus Bebro, Hy Bebro, & Joseph Bebro, Manch, Job Merchants. Dec 2. Asst. Reg Dec 15.
Bompas, Chas Smith, Manch, Tin Plate Worker. Dec 4. Asst. Reg Dec 13.
Wykern, John, Redhill, Grocer. Nov 19. Conv. Reg Dec 14.
Burt, Geo, Fovant, Wilts, Miller. Nov 18. Asst. Reg Dec 14.
Cridland, Thos, Williton, Somerset, Seedsman. Dec 3. Asst. Reg Dec 12.
Dering, Chas, & Chas Gibbs, Framlingham, Suffolk, Tallow Chandlers. Nov 18. Conv. Reg Dec 12.
Douglas, Jas, Worcester, Grocer. Nov 17. Conv. Reg Dec 14.
Partridge, Wm Holland, Mark-lane, Wine Merchant. Nov 16. Asst. Reg Dec 12.
Gale, Chas David, Warminster, Tailor. Nov 17. Asst. Reg Dec 14.
Garthwaite, Wm, Thornley, Durham, Brewer. Nov 30. Conv. Reg Dec 14.
Hall, Saml, Aberdare, Cabinet Maker. Nov 24. Conv. Reg Dec 15.
Hannay, John, York, Travelling Draper. Nov 17. Conv. Reg Dec 12.
Harris, Michael, Nattan-pl, Commercial-rd, Middlx, Ironmonger. Nov 18. Asst. Reg Dec 15.
Hayward, Edwin, Fetter-lane, Victualler. Nov 14. Asst. Reg Dec 12.
Hewitt, John, Stretton Baskerville, Warwick, Farmer. Nov 20. Conv. Reg Dec 15.
Hirst, Saml, Bradford, Woolstapler. Nov 17. Asst. Reg Dec 12.
Johnson, Wm Moorhead, Manch, Provision Dealer. Nov 16. Asst. Reg Dec 12.
Lambert, Joseph Gustavus, Seymour-pl, Old Brompton, Agent. Dec 11. Comp. Reg Dec 15.
Kenaitt, Joseph, Eastbourne, Outfitter. Dec 1. Conv. Reg Dec 14.
Mulcaster, Thos Calvert, Carlisle, Draper. Dec 14. Asst. Reg Dec 12.
Mulvey, Wm, Hampton Wick, Builder. Nov 19. Conv. Reg Dec 11.
Parker, Rbt, Bishopsgate-st without, Commercial Traveller. Dec 1. Comp. Reg Dec 11.
Rowlinson, Amelia, Birm, Axletree Manufacturer. Nov 26. Asst. Reg Dec 11.
Rutherford, Geo Stevenson de Marniac, James-st, Paddington, Genl, Dec 1. Asst. Reg Dec 12.
Shiers, John Wm, Pentonville-rd, Tailor. Nov 26. Conv. Reg Dec 12.
Sutton, Dockray, Carlisle, Draper. Nov 13. Asst. Reg Dec 11.
Taylor, John, Stainecliffe, York, Woollen Manufacturer. Nov 16. Asst. Reg Dec 15.

## Bankrupts.

FRIDAY, Dec. 11, 1863.

To Surrender in London.

Barton, Hy Augustus, Cursitor-st, Middlx, no business. Pet Dec 10. Dec 29 at 11. Tucker, St Swithin's-lane.
Bennett, Chas, Tollard Royal, nr Salisbury, Corn Dealer. Pet Dec 9. Dec 22 at 3. Linklaters & Hackwood, Walbrook.
Cameron, Edwin Augustus, Rose-st, Bethnal-green, Timber Merchant. Pet Dec 7. Dec 23 at 1.30. Heathfield, Lincoln's-inn-fields.
Carver, Fredk Langworthy, and Geo Sidney Carver, Skinner-st, Hat Manufacturers. Pet Dec 1. Dec 22 at 1.30. Poole & Gamlen, Gray's-inn, and Sweet, Bristol.
Cope, Hy, St Ives, Huntingdon, Cabinet Maker. Pet Dec 8. Dec 22 at 12. Perrin, Lincoln's-inn-fields, for Watts & Sons, St Ives.
Drew, Hy Thos, Upper-st, Islington, Boot Manufacturer. Pet Dec 10. Dec 29 at 12. Keene, Lower Thames-st.
Durant, Saml, Paragon-rd, Hackney, Commercial Traveller. Pet Dec 9. Dec 22 at 1.30. Hill, Basinghall-st.
Farmer, Thos Green, Upper Chapman-st, St George's-in-the-East, Corn Chandler. Pet Dec 7 (for pau). Dec 29 at 12. Aldridge.
Furse, Wm, Fitzroy-pl, Primrose-hill, Builder. Pet Dec 7. Dec 22 at 12. Lewis & Lewis, Ely-pl.
Hardisty, Fredk Adolphus, Prospect-pl, Wandsworth-rd, Clerk. Pet Dec 7. Jan 4 at 1. Godfrey, Gray's-inn.
Lane, Gore Ouseley, Cheyne-walk, Chelsea, Architect. Pet Dec 8. Jan 4 at 1. Pope, Old Broad-st.
Manchin, Marie Emanuel, Norfolk-rd, Islington, Importer of Watches. Pet Dec 8. Jan 4 at 1. Pawle & Lovesy, New-inn.
May, Wm, Catherine-ct, Ship Broker. Pet Dec 8. Dec 22 at 2. Lawrence & Co, Old Jewry-chambers.
Paice, John, jun, South-ter, Bermondsey, Carman. Pet Dec 5. Dec 22 at 3. Silvester, Gt Dover-st.
Raine, Thos, Belle-vue-pl, Clapham, Cheesemonger. Pet Dec 5, Dec 22 at 2. Sheffield, Old Broad-st.
Reynolds, Chas, Beaumont-row, Mile End, Builder. Pet Dec 9 (for pau). Dec 29 at 12. Aldridge.
Richardson, Hy, Chapel-st, Pentonville, Cheesemonger. Pet Dec 9. Dec 22 at 2. Marshall, Lincoln's-inn-fields.
Robinson, John, Rodney-bldgs, New Kent-rd, Schoolmaster. Pet Dec 9. Dec 29 at 3. Apps, Gray's-inn.
Rogalewies, Benedict Rudolph, Foxley-rd, Kensington, Artist. Pet Dec 3. Dec 23 at 1. Davis, Golden-sq.
Rogers, Thos, jun, Shrubland-grove, Dalston, out of employ. Pet Dec 8. Dec 22 at 1. Venn, New-inn.
Shallis, John Fuller, St Mark's-sq, Regent's-park, Commercial Clerk. Pet Dec 5. Dec 22 at 1. Dalton, Bucklersbury.
Skinner, Saml Jones, Roslyn-cottages, Kensington-rd, out of business. Pet Dec 9 (for pau). Dec 29 at 12. Aldridge.
Slowe, John Joseph, Old Kent-rd, out of business. Pet Dec 7. Dec 22 at 1. Buchanan, Basinghall-st.
Tidy, Richd, Ockley, nr Dorking, Mealman. Pet Dec 9 (for pau). Dec 29 at 1. Aldridge.
Weston, John, Three King-ct, Lombard-st, Wine Merchant. Pet Dec 8. Dec 29 at 11. Rodwell, Connaught-ter.

To Surrender in the Country.

Akill, Joseph, Beverley, Gunsmith. Pet Dec 7. Beverley, Dec 24 at 11. Summers, Hull.
Arandall, Thos, Leeds, Boot Manufacturer. Pet Dec 3. Leeds, Dec 22 at 11. Lees & Senior, Bradford; Maude; Bond & Barwick, Leeds.
Barnes, Wm, Reading, Victualler. Pet Dec 5. Reading, Dec 21 at 12. Smith, Reading.
Bartholomew, Ann Maria, Maidstone, Saddler. Pet Nov 24. Maidstone, Dec 24 at 12. Rogers, Tonbridge.
Batters, Francis, Lpool, Butcher. Pet Dec 7. Lpool, Dec 22 at 3. Henry, Lpool.
Blackwell, Wm, Northampton, Carpenter. Pet Dec 8. Northampton, Dec 24 at 10. Shield & White, Northampton.
Brookes, Joshua, jun., Hanley, Butcher. Pet Dec 10. Hanley, Jan 16 at 12. Moxon, Hanley.
Cotton, Hy, Nottingham, Box Maker. Adj Dec 8. Nottingham, Jan 27 at 11. Maples, Nottingham.
Davies, Rees, Llandovery, Carmarthen, Cordwainer. Pet Dec 1. Llandovery, Dec 15 at 1. Bishop, Brecknock.
Driver, John, Ossett, York, Reed Maker. Pet Dec 8. Dewsbury, Jan 1 at 2. Stringer, Ossett.
Earnshaw, Wm, Whitby, Tailor. Pet Dec 8. Leeds, Dec 22 at 11. Walker & Hunter, Whitby, and Payne & Co, Leeds.
Eyre, Stephen Robert, New Brighton, Chester, Victualler. Pet Dec 10. Lpool, Dec 29 at 11. Pemberton, Lpool.

Finch, Joseph, Wissett, Suffolk, Blacksmith. Pet Dec 7. Halesworth, Dec 29 at 11. Read, Halesworth.
Findon, Wm, Birm, Carpenter. Pet Dec 4. Birm, Jan 18 at 10. Parry, Birm.
Fletcher, Wm, Bolton, Broker, Pet Dec 7. Bolton, Dec 23 at 10. Hinnell, Bolton.
Fortescue, John Edward, Lichfield, Butcher. Pet Dec 9. Birm, Jan 4 at 12. Taylor, Birm.
Fox, Chas, Kingston-upon-Hull, Sailmaker. Pet Dec 9. Kingston-upon-Hull, Dec 23 at 12. Hearfield, Hull.
Hague, Jos, Rawmarsh, near Rotherham, Farmer. Pet Dec 7. Rotherham, Jan 4 at 11. Binney, Sheffield.
Hart, Ewd, Ashford, Kent, Beerseller. Adj Nov 18. Maidstone, Dec 22 at 3.
Hunt, John, Loughborough, Joiner. Pet Dec 7. Loughborough, Dec 23 at 10. Deane, Loughborough.
Kerr, Jas, Neath, Victualler. Pet Dec 10. Bristol, Dec 24 at 11. Cuthbertson, Neath, and Bevan & Co, Bristol.
Kirton, Job, Hardwick, near Wellingborough, Carpenter. Pet Dec 2. Wellingborough, Dec 23 at 10.30. Cook, Wellingborough.
Marriotts, Wm, Nottingham, Publican. Adj Dec 8. Nottingham, Jan 12 at 11. Maples, Nottingham.
Owen, David, Wainfaur, Cardigan, Farmer. Pet Nov 2. Aberystwith, Jan 16 at 10. Rowe, Aberystwith.
Peacock, Thos, Tees Tilery, York, Butcher. Pet Dec 8. Stockton-on-Tees, Dec 23 at 3. Dobson, Middlesborough.
Preston, John, Birm, out of business. Pet Dec 8. Birm, Jan 18 at 10. Beeton, Birm.
Richardson, Geo, Wetherby, York, Butcher. Pet Dec 7. Tadcaster, Jan 11 at 2. Dobson, Middlesborough.
Ross, Edwin Goodlad, Kingston-upon-Hull, Commission Agent. Pet Dec 9. Leeds, Dec 23 at 12. Bell & Leak, Hull.
Saunders, Sml, Birm, Jeweller. Pet Dec 9. Birm, Jan 18 at 10. Duke, Birm.
Schaeffer, Wm Chas Theodore, Stanningley, York, Oil and Grease Manufacturer. Pet Dec 8. Leeds, Dec 24 at 11. North & Sons, Leeds.
Stanford, Sml, Wolverhampton, Horse Dealer. Pet Dec 9. Birm, Jan 4 at 12. Bartlett, Wolverhampton.
Toon, Eliza, Leicester, Grocer. Pet Dec 8. Leicester, Dec 23 at 10.30. Petty, Leicester.
Tricker, Philip, Hacheston, Suffolk, Coachbuilder. Pet Dec 8. Woodbridge, Dec 24 at 11. Welton, Woodbridge.
Trubey, Chas Wm, Newport, Monmouth, Beerseller. Pet Dec 9. Newport, Jan 6 at 10. Whicocks, Newport.
Turner, John, Manch, Commission Agent. Pet Dec 9. Manch, Jan 6 at 12. Boote, Manch.
Walton, Thos, Manch, Glass Manufacturer. Adj Jan 16. Manch, Jan 14 at 12. Gardner, Manch.
White, Wm, Appleby, Derby, Grocer. Pet Dec 9. Ashby-de-la-Zouch, Dec 23 at 11. Dewes, Ashby-de-la-Zouch.

TUESDAY, Dec. 15, 1863.

To Surrender in London.

Bathurst, Ewd, Albion Hotel, Cockspur-st, Gent. Pet Dec 11. Dec 29 at 12. Lewis & Lewis, Ely-pl.
Boddy, Geo, Church-ter, Kentish-town, Builder. Pet Dec 10 (for pau). Dec 29 at 1. Aldridge.
Briant, Geo Hy, Upper Thames-st, Chemist. Pet Dec 11. Jan 5 at 12. Chidley, Old Jewry.
Brine, Chas, Nunney, Somerset, Carman. Pet Dec 8. Jan 5 at 11. Olive, Portsmouth-st.
Coombes, Ewd, Meopham, near Gravesend, Farmer. Pet Dec 12. Dec 29 at 1. Hill, Basinghall-st.
Cooper, Philip, Ashford, Corn Factor. Pet Dec 4. Dec 29 at 1. Duncan & Murton, Southampton-st, and Furley & Co, Ashford.
Dodds, John, Cecil-st, Strand, Merchant. Pet Dec 11. Dec 29 at 11. George & Armstrong, Size-lane.
Jackman, Martin, Great St Andrew-st, St Giles, Dealer in Poultry. Pet Dec 10. Dec 29 at 12. Walker, Guildhall-chambers.
Jones, Wm, Horley, Surrey, Brewer's Assistant. Pet Dec 11 (for pau). Dec 29 at 11. Aldridge.
Martin, Wm, Bronti-pl, Walworth, Coach Broker. Pet Dec 11. Jan 5 at 12. Pittman, Upper Stamford-st.
Paynter, Wm, Enfield-rd, Kingsland, Commission Agent. Pet Dec 10. Dec 29 at 1. Beard, Basinghall-st.
Pullen, Thos Jas, Wellington-ter, Dalston, Gent. Pet Dec 11. Dec 29 at 1. Mossop, Ironmonger-lane.
Romer, Peter Jacob, Wenlock-st, Hoxton, Commission Agent. Pet Dec 12. Dec 29 at 1. Smith, Denbigh-st.
Scholey, Philip, Eynsham, Victualler. Pet Dec 10. Dec 29 at 12. Hill, Basinghall-st.
Scott, John Hy, Tibberton-sq, Islington, Commission Agent. Pet Dec 8. Dec 29 at 11. Lawrence & Co, Bread-st.
Walker, Thos, and Eliz Walker, Goswell-st, Timber Merchants. Pet Dec 4. Dec 29 at 1. Venning & Co, Tokenhouse-yard.

To Surrender in the Country.

Attrick, Joseph, Wolverhampton, Retail Brewer. Pet Dec 9. Birm, Jan 1 at 12. Allen, Birm, and Walker, Wolverhampton.
Barker, John Joseph, Bath, Picture Dealer. Adj Dec 9. Bristol, Dec 29 at 11. Brittan, Bristol.
Blewitt, Wm, Wyrley Bank, Stafford, Chartermaster. Pet. Walsall, Dec 23 at 12. Wilkinson, Walsall.
Bowles, Geo, jun, Evercreech, Somerset, Farmer. Pet Dec 10. Wells, Jan 2 at 10.30. Alder, Wells.
Burnley, Abraham, Batley, York, Rag Merchant. Pet Dec 11. Dewsbury, Jan 22 at 11. Ibberson, Dewsbury.
Cox, Nathl, Chester, Iron Ship Builder. Pet Dec 5. Lpool, Jan 1 at 11. Etty, Lpool.
Edwards, Wm, Swansea, Grocer. Pet Dec 9. Swansea, Jan 6 at 3. Morris, Swansea.
Garratt, Jeremiah, Dudley, Chain Maker. Pet Dec 12. Dudley, Dec 31 at 11. Lowe, Dudley.
Hargreaves, Rbt, and Joseph Hargreaves, Lpool, Builders. Pet Dec 9. Lpool, Dec 28 at 11. Ridley & Co, Lpool.
Harrold, Hy, Bradley, Stafford, Builder. Pet Dec 11. Dudley, Dec 31 at 11. Beeton, Birm.
Haskayne, Edw, Lpool, Auctioneer. Pet Dec 10. Lpool, Dec 30 at 3. Henry, Lpool.
Herbert, Wm Hy, Sawbridgeworth, Hertford, Railway Porter. Pet Dec 10. Bishop's Stortford, Jan 7 at 11. Baker, Bishop's Stortford.
Higginbotham, Francis Joseph, Ashton-under-Lyne, Lancaster, Attorney-at-Law and Solicitor. Pet Dec 7. Ormskirk, Dec 22 at 11.30. Swire, Manch.
Howard, Geo, Tempsford, Bedford, Shoemaker. Pet Dec 9. Biggleswade, Dec 23 at 3. Conquest & Stimson, Bedford.
Horsefield, John, Blackburn, Plasterer. Pet Dec 7. Blackburn, Jan 4 at 1. Backhouse, Blackburn.
Johnson, Jas Crawford, Walness Pendleton, nr Salford, Grease Maker. Pet Dec 10. Salford, Dec 30 at 9.30. Nuttall, Manch.
Labrum, Thos, Hardingstone, Northampton, Beerseller. Pet Dec 11. Northampton, Jan 2 at 10. Shield & White, Northampton.
Lackenby, Nicholas, York, Hairdresser. Pet Dec 8 (for pau). York, Dec 30 at 11. Mason, York.
Lees, Philip Hy, Derby, Book-keeper. Pet Dec 11. Derby, Dec 28 at 12. Holt, Derby.
Lindley, Rchd, Belton, Lincoln, Jobber. Pet Nov 20. Thorne, Dec 30 at 1. Brown, Lincoln.
Marsden, Thos, Settle, York, Wine Merchant. Pet Dec 11. Leeds, Dec 31 at 11. North & Sons, Leeds.
Martin, Benj, Brockmoor, Stafford, Chartermaster. Pet Dec 11. Stourbridge, Jan 25 at 10. Maltby, Stourbridge.
Midgley, Jas, Smallbridge, nr Rochdale, Victualler. Pet Dec 10. Rochdale, Dec 30 at 11. Whitehead, Rochdale.
Morrell, John, Lpool, Eating-house Keeper. Pet Dec 8. Lpool, Dec 30 at 3. Husband, Lpool.
Mowatt, Alex, jun, Bath, Watchmaker. Adj Dec 9. Bristol, Dec 29 at 11. Brittan, Bristol.
Mutton, Joseph, Cambridge, Plumber, &c. Pet Dec 11. Cambridge, Dec 28 at 12. Hunt, Cambridge.
O'Regan, Timothy, Abergavenny, Grocer. Pet Dec 8. Abergavenny, Dec 29 at 12. Sayce, Abergavenny.
Patton, Ralph, Newcastle-upon-Tyne, Victualler. Pet Dec 4. Newcastle, Jan 9 at 10. Joel, Newcastle-upon-Tyne.
Pye, Hy Higgins, Grimley, Worcester, Horse Dealer. Pet Dec 10. Worcester, Dec 28 at 11. Wilson, Worcester.
Richards, Sarah Hy, Uffculme, Devon, Victualler. Pet Dec 10. Tiverton, Dec 24 at 11. Flood, Exeter.
Robinson, Thos, & Spencer Banks Booth, Bradford, Worsted Spinners. Pet Dec 11. Leeds, Jan 11 at 11. Bond & Barwick, Leeds.
Seymour, John, Crowan, Cornwall, Mine Agent. Pet Dec 7. Helston, Dec 23 at 10. Downing, Redruth.
Slack, Martin, Chesterfield, Beerseller. Pet Dec 12. Chesterfield, Jan 13 at 11. Broadbent, Sheffield.
Stilborn, Francis, Bishop Wilton, York, Butcher. Pet Dec 14. Leeds, Dec 31 at 11. Young, York, and Simpson, Leeds.
Stone, John, Bridgwater, Butcher. Pet Dec 11. Exeter, Dec 30 at 1. Smith, Bridgwater, and Hirtzel, Exeter.
Sykes, Matthew, West Town, Dewsbury, Greengrocer. Pet Dec 11. Dewsbury, Jan 1 at 2. Scholes & Son, Dewsbury.
Symmons, John, Walsall, Shoe Tip Manufacturer. Pet Dec 12. Birm, Jan 4 at 12. Wright, Birm.
Thompson, Thos, Ravensden, Bedford, Blacksmith. Pet Dec 12. Bedford, Jan 11 at 2. Marshall, Lincoln's-inn-fields.
Whitaker, Jas, Gt Horton, Bradford, Grocer. Pet Dec 11. Bradford, Jan 12 at 10. Hill, Bradford.
Wildish, Wm, Maidstone, Wheelwright. Pet Dec 5. Maidstone, Dec 31 at 10. Goodwin, Maidstone.
Young, James, Sunderland, Marine Store Dealer. Pet Dec 8. Bishopwearmouth, Dec 29 at 12. Eglinton, Sunderland.

BANKRUPTCY ANNULLED.

FRIDAY, Dec. 11, 1863.

Brandon, Josiah, Jermyn-st, St. James's, Wine Merchant. Dec 10.

## ESTATE EXCHANGE REPORT.

AT THE MART.

Dec. 8.—By Messrs. WILKINSON & HORNE.

Leasehold premises, No. 75, Old Broad-st, known as Gresham-chambers; term, 31 years from Midsummer, 1841; ground-rent, £170 per annum; let at £1,448 18s. per annum.—Sold for £8,200.

Leasehold premises, No. 8, Austin-friars; term, 41 years from Midsummer, 1828; ground-rent £59 18s. 4d.; let at £650 per annum.—Sold for £1,700.

By Messrs. VESTON & SON.

Absolute reversion to one-fourth of one-fifth of a sum of £12,333, Three per Cent. Consols, payable upon the death of the survivor, a gentleman, aged 67, and a lady, aged 60.—Sold for £205.

A vested reversionary interest in one-fourth of a sum of £3,477 16s. 4d., Three per Cent Consols, payable upon the death of the survivor of a gentleman, aged 67, and a lady, aged 60.—Sold for £205.

Dec 11.—By Messrs. EDWIN FOX & BOUSFIELD.

Freehold and leasehold estate, comprising three residences, a house and shop, and two cottages, situate at Elm-grove, Rye-lane, Peckham.—Sold for £2,000.

By Messrs. NORTON, HOGGART, & TAIRR.

Freehold enclosure of accommodation land, with orchard and three cottages, containing about eight acres, situate at Mangotsfield.—Sold for £590.

Freehold, about seven acres of accommodation land at Mangotsfield.—Sold for £540.

AT GARRAWAY'S.

Dec. 9.—By Messrs. PRICE & CLARK.

An annuity of £100 per year, during the life of a lady in her 61st year, also two policies of assurance upon the life of the same lady—one in the Victoria and Legal and Commercial Life Assurance Company, for £500, and the other in the London and Provincial Law Assurance Society, for £100.—Sold for £740.

Dec. 10.—By Mr. VIGERS.

Freehold, one undivided third part or share of and in the business premises, known as No. 190, Bishopsgate-street without, let for a term which will expire at Michaelmas, 1869, at £200 per annum for the entirety, in three sums of £66 13s. 4d. for each share.—Sold for £3,000.